

Exclusion Resolved?

A Case Study of Zoning Reform in Pound Ridge, NY

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Abstract

In 2006 Westchester County was sued under the False Claims Act by the Anti-Discrimination Center for accepting federal money for affirmatively furthering fair housing from the Housing and Urban Development Corporation (HUD) when in fact they were not affirmatively furthering fair housing. In 2009 Westchester County settled the lawsuit by entering into a legally binding Consent Decree with HUD that required Westchester to affirmatively further fair housing by building 750 units in its least racially integrated municipalities, set aside funds to support the development of fair housing, and to enforce fair housing practices among municipalities that practice exclusionary zoning, if necessary by legal means. HUD determined that Westchester County was not acting in good faith in its pursuance of removing exclusionary barriers to affirmatively furthering fair housing and as a result appointed a Federal Housing Monitor to conduct analyses to determine exclusionary zoning policies and enforce affirmatively furthering fair housing practices. The Federal Housing Monitor conducted two analyses, a Huntington Analysis and Berenson Analysis, and found several towns to have zoning ordinances that may potentially be exclusionary. Pound Ridge was one of the municipalities to have elements of its zoning ordinance be found as potentially exclusionary under the Federal Housing Monitor's Berenson Analysis. In response the town amended its zoning code to expand its special permit for multi-family housing from allowing only senior housing to allowing all types of multi-family housing. This thesis looks to answer three questions. What are the implicit goals of Pound Ridge's amended multi-family zoning code? What is Pound Ridge's capacity, under its amended zoning code, to support multi-family and affordable housing? How do the changes made to the Pound Ridge zoning code meet the goals of the 2009 Consent Decree signed between HUD and Westchester County?

Introduction

Westchester County has been engaged in a series of legal battles with the United States Department of Housing and Urban Development (HUD) since 2006 when the County was charged under the False Claims Act for accepting federal housing funds to affirmatively further fair housing without conducting analyses on the role of race in housing opportunity. The County, rather than go to trial, settled with the federal government and entered into a consent decree in 2009. The Consent Decree required that Westchester build 750 affordable housing units within a specified time frame, that the County conduct analyses on the zoning codes of Westchester municipalities to assess whether barriers to fair housing practices existed, that the County legally take action against municipalities found to have regulatory barriers that hindered fair housing practices, and that the County pay the federal government \$30 million dollars, \$21 million of which would be earmarked for Westchester's HUD fund to affirmatively further fair housing. Lastly, a Federal Housing Monitor was appointed by the Court to supervise the County's compliance with the Consent Decree and to serve as a mediator between the County and HUD.

After a series of disputes about the quality of the County's assessment of local zoning practices, which found no exclusionary practices or regulatory barriers to exist within any Westchester municipality, the Federal Housing Monitor conducted two separate analyses, The Berenson Report in 2013 and the Huntington Analysis in 2014. The Housing Monitor's reports found potentially exclusionary zoning practices to exist in several Westchester municipalities. Among the municipalities found to have potentially exclusionary zoning practices under the Berenson Report was Pound Ridge.

After the Berenson Report was filed in 2013, the town of Pound Ridge, which was in the middle of amending its zoning code at the time, worked with the Federal Housing Monitor to adopt a HUD model zoning ordinance to allow for a broader inclusion of multi-family and affordable housing development. The amendments to the zoning code were adopted in 2014. The town continued to work with the Federal Housing Monitor by participating in a multi-family housing charrette with WXY Architects and working with developers interested in developing multi-family housing in

Pound Ridge. One notable proposed multi-family housing development, Ridge 29, proposed to build 43 multi-family units, 5 of which would be affordable. The Town Supervisor, Richard Lyman, advocated for the development, however, the project remains unbuilt due to objections from the New York State Department of Environmental Conservation (DEC). In March 2015 the Federal Housing Monitor removed Pound Ridge from the list of municipalities with potentially exclusionary zoning ordinances.

This thesis looks to assess the implicit goals of Pound Ridge's amended multi-family zoning code and to quantify how these amendments have changed the town's capacity to support multi-family housing and affordable housing. By determining what the town's goals and max capacity for multi-family and affordable housing units is, this thesis then looks to qualitatively assess how Pound Ridge's new capacity to support multi-family housing is in accordance with the 2009 Consent Decree that Westchester County entered as a result of their settlement with the federal government.

Methodology

This thesis looks to answer three questions. What are the implicit goals of Pound Ridge's amended multi-family zoning code? What is Pound Ridge's capacity, under its amended zoning code, to support multi-family and affordable housing? How do the changes made to the Pound Ridge zoning code meet the goals of the 2009 Consent Decree signed between HUD and Westchester County? To answer these questions, I reviewed the Pound Ridge zoning code, analyzed the effects of the zoning code on vacant lots within Pound Ridge in GIS, and conducted several interviews with the Town Supervisor of Pound Ridge, consultants with the Federal Housing Monitor, the Executive Director of the Anti-Discrimination Center of Metro New York, and a Managing Principal with WXY Architects.

The first question, What are the implicit goals of Pound Ridge's amended multi-family zoning code?, was answered by reviewing the Pound Ridge multi-family zoning code with Pound Ridge Town Supervisor Richard Lyman. Through two interviews, one in person and one by phone, we reviewed the twenty-two ordinances that make up the Pound Ridge multi-family zoning section of the town code. Based upon these interviews, the implicit intentions of the individual zoning ordinances were classified into one of four possible categories; Preservation of Community Character, Environmental Concerns, Infrastructural Capacity, or Procedural/Incentive Measures.

The second question, What is Pound Ridge's capacity, under its amended zoning code, to support multi-family and affordable housing?, was answered through GIS analysis of Pound Ridge's multi-family zoning code. Shapefiles for tax lot data, wetlands, steep slopes, and water bodies were downloaded from the Westchester County online GIS database, giswww.westchestergov.com/wc-gis. The tax lot data includes a data table with property information and corresponding shapefile. A query statement was used in order to determine what parcels were classified as Vacant/Undeveloped in Pound Ridge.

The first map, Vacant Lots that Meet Minimum Lot Criteria, was created by spatially joining the

Pound Ridge Tax Lot shapefile with the Pound Ridge Zoning Districts shapefile, according to parcels that had their centroid located in a zoning district. The selected parcels were determined by querying the newly created Tax Lot and Zoning District shapefile by parcels in the R-1A zoning that are vacant/undeveloped greater than or equal to twenty acres, and parcels in R-3A zoning that are vacant/undeveloped and greater than or equal to thirty acres. The ten parcels that were returned from this query were verified to be vacant/undeveloped on the Pound Ridge GIS website, http://www.axisgis.com/Pound_RidgeNY/.

The second map, Quarter Mile Road Buffer, was determined by creating a quarter mile buffer around the major roads, Westchester Avenue, High Ridge Road, Salem Road, Stone Hill Road, Pound Ridge Road, or Long Ridge Road. The previously created shapefile that showed tax lots that met the minimum lot criteria by zoning district was selected by location to show what lots intersected with the quarter mile road buffer. These seven selected lots were then exported as a new shapefile to show parcels that met minimum lot requirements and the quarter mile road buffer provision.

The third map, Scott's Corner Buffer, was created by making a quarter mile buffer from the intersection of Westchester Avenue and Trinity Pass Road. The Pound Ridge tax lot shapefile was then queried by one acre or greater lots that are classified as Vacant/Undeveloped. The query results were then selected by location, features that intersect with the quarter mile buffer of Westchester Avenue and Trinity Pass Road. Two lots were found to be greater than one acre and intersect with the buffer. They were added to the eligible parcels found in the previous map.

The fourth map, Slopes, Wetlands, & Waterbodies, was created by spatially joining and dissolving the shapefiles for Pound Ridge's steep slopes, wetlands, and water bodies. This single shape file was then intersected with Pound Ridge lot data to create a new shapefile that showed how much of each lot was taken up by wetlands, waterbodies, and steep slopes in excess of 25%. It was then calculated within the intersected shapefile's attribute table what percentage of each lot's total land area was made up of steep slopes, water bodies, and wetlands.

The fifth map was an amalgamation of the previous maps. A query statement was run in order to determine what lots met the criteria set forth in the first four maps. The seven lots that met the criteria were identified. Vacant lots, vacant lots that met one of the criteria, and vacant lots that met two of the criteria were identified through a separate query and identified with cross hatchings on the final map. From this map the total number of vacant lots that met the specifications for multi-family development were identified. However, since the vacant lots may have been occupied since the GIS shape and data file were created, I cross referenced their vacancy status with the Town of Pound Ridge online GIS tax lot database, http://www.axisgis.com/Pound_RidgeNY/. The seven lots that were identified and verified as eligible for multi-family housing were then put into an excel spreadsheet where, based upon their area and the percentage of their area taken up by slopes, wetlands, and waterbodies, site design specifications were determined.

The third question, How do the changes made to the Pound Ridge zoning code meet the goals of the 2009 Consent Decree signed between HUD and Westchester County?, was answered by comparing the implicit goals and capacity of the Pound Ridge zoning code with the goals set out by the 2009 Consent Decree. The goals of the 2009 Consent Decree were determined by reviewing the Consent Decree and through interviews with two consultants for the Federal Housing Monitor and the Executive Director of the Anti-Discrimination Center of Metro New York.

Literature Review

The literature surrounding exclusionary zoning concerns the definition and identification of exclusionary zoning, the motivations behind exclusionary zoning, the effects of exclusionary zoning, and remedies to exclusionary zoning. Defining and identifying exclusionary zoning is a topic in which some consent exists. The motivations for exclusionary zoning are more diverse and less clear. The effects are widespread and continue to be debated. The remedies are few, but tend to involve judicial intervention and regional cooperation.

Exclusionary zoning is defined as “an abuse of the zoning and planning power...which consists of adopting zoning ordinances and policies designed to exclude less affluent citizens in general and minority groups in particular” (Committee on Public Regulation of Land Use, 1971). The Harvard Law review identified five forms that exclusionary zoning could take. The first is the setting of a minimum lot size, typically in excess of one-acre. “While this form of zoning does not necessarily raise the price of a parcel of land of given size, it does significantly inflate the cost of entry into the market by requiring people to buy lots much larger than they would otherwise need” (Harvard Law Review, 1971). The second is the prescription of a minimum floor space requirement for homes. As there tends to be a connection between home size and price “such requirements operate as thinly disguised price controls” (Harvard Law Review, 1971). The third is a prohibition or unjustified restriction on the construction of multiple family dwellings. “Since there are good reasons for both low-income persons and developers to prefer low income apartments to single family dwellings, the effect of restrictions on apartments may be to ensure that no low-income housing gets built at all” (Harvard Law Review, 1971). The fourth, is the enforcement of strict building codes, which unnecessarily increase costs of construction and the price the price of the house. The fifth, is the utilization of non-Euclidean zoning, meaning that “a zone is allotted for a particular type of use (apartments for example), but no specified location is set aside for that use. This permits the local zoning board to rule individually on every application for such uses, providing an opportunity to delay and frustrate disfavored types of development” (Harvard Law Review, 1971).

The motivation for a municipality to enact exclusionary zoning varies. Bogart has found identified four possible motivations, fiscal zoning, public goods zoning, consumption zoning, and political economic zoning. Fiscal zoning is the motivation to exclude lower income groups, who receive more in local services than they pay in local taxes (Bogart, 1993). Public goods zoning is the desire to exclude a population that will inflate the costs of public services. Consumption zoning is the desire to prevent community heterogeneity to limit consumptive forces, whether they be increased retail or environmental consumption. Political economic zoning is the desire to exclude a population because their desire to consume public goods differs from the existing community. Trubek, Cohen, and Branfman (1973) found qualified support that exclusionary zoning may, to a certain extent, be motivated by race.

Exclusionary zoning has been studied to understand its effects on land and home values, density, and socioeconomic and racial diversity. In terms of land and home values, the literature is ambiguous. William G. Moss found in a 1977 study that “the imposition of and increase in minimum lot size requirements may increase land prices and housing costs and accelerate urban-rural conversion” (Moss, 1975). Grieson and White find that density restrictions have an effect on all land use prices equally, however, whether it results in an increase in property value is situational (Grieson & White, 1980). Mark and Goldberg created a model in which the home values in Vancouver were studied over time in relation to zoning restrictions and found that while there was an effect on home values, however, the effect could not be said to be associated with increased or decreased property values (Mark and Goldberg, 1985). In terms of density, Frew, Jud, and Wingler found that restrictive land use regulations “affects both the density and the intensity of residential land use through its effects on the value of residential land” (Frew, et al. 1990). A Congressional subcommittee was appointed in 1991 to identify regulatory barriers to housing affordability and was documented by Downs (1991). The study identifies nineteen specific regulatory barriers that restrict housing affordability. Among them are 1) Zoning regulations that require large lots, large minimum housing sizes, or large side yards, 2) Zoning regulations that greatly restrict the amount of land on which multifamily housing can be built, given that multifamily units can be constructed for less expensively than single family

units, 3) Building codes that prohibit the construction or maintenance of single-room-occupancy (SRO) hotels or apartments, even though such dwellings provide now homeless individuals with “decent-quality” accommodations far superior to what they otherwise could afford.

In terms of socioeconomic and racial diversity, the literature suggests that there is a correlation between restrictive zoning practices and areas with low minority and poor populations. An early study conducted by Trubek, Cohen, and Branfman (1973) looked at the effects of municipal regulations on the clustering of income groups. The study surveyed 30 American metropolitan areas and found qualified support “that public controls do affect the degree of income group clustering, and that these controls may, to an extent, be racially motivated” (Trubek et al, 1973). In particular, the study pointed to the prevalence of exclusionary zoning in suburban communities as a reason for the clustering of lower income households in central urban areas. Two studies, one by Burnell and Burnell (1989) and one by Bates and Santerre (1994), found that regulatory barriers, were more common in communities with high proportions of wealthy, non-Hispanic whites than in communities with minorities. Pogodzinski and Sass (1994) found that Areas with single-family detached houses have higher proportions of whites than places with multi-family housing. Donovan and Neiman (1995) explored the impacts of urban growth management policies on minorities and found that areas with restrictive growth management policies have lower proportions of blacks, but found no relationship to Hispanics. Dowell (1980) conducted a national survey of 228 municipalities with growth management policies and found only 15 of these municipalities had high proportions of minorities. Pendall (2000) sought to address the question head on and asked whether there is a statistically significant connection between low density only zoning and racial exclusion. The study tied all of the previous studies together by answering, yes there is a statistically significant connection between low density only zoning and racial exclusion. The study also found that growth caps, such as urban growth boundaries or other limits on future development, has had the effect of further segregating the suburbs. Pendall terms this exclusion that perpetuates itself the chain of exclusion, in which zoning regulations lead to a lower housing production and a shift towards single family homes that exclude renters.

Remedies to exclusionary zoning have come primarily through court decisions and legislation. The Harvard Law Review in 1995 identified three methods of remedying exclusionary zoning, judicially, legislatively, and through state sponsored growth management legislation (Harvard Law Review, 1995). The court system has recognized the existence of exclusionary zoning and invalidated its use early as the 1950s (*Board of County Supervisors v. Carper*, 1959), however, the first time that a court struck down an exclusionary zoning ordinance and offered a remedy was the New Jersey Supreme Court in the Mount Laurel cases decided in 1975 and 1983. In Mount Laurel I (1975) the New Jersey Supreme Court struck down a Mount Laurel Township's zoning code after it was determined that it created unnecessary barriers to affordable housing. The Court further determined that municipalities had an obligation to provide a fair share of regional affordable housing. Mount Laurel II resulted in a substantive mandate for municipalities to implement a regional fair share housing plan. Mount Laurel, to date, is by far the most far reaching of exclusionary court cases. New Hampshire came close to New Jersey in the Chester court case, which invalidated a zoning ordinance for failing to take into consideration regional housing needs. In New York *Berenson v Town of New Castle* (1979) applied a regional fair share analysis to an exclusionary zoning court case. Pennsylvania and Virginia have invalidated exclusionary zoning ordinances, but have not made an affirmative demand on municipalities. Illinois and Michigan have invalidated the exclusion of mobile homes, but have not protected any other housing typology. The Harvard Law Review Association in evaluating the judicial approach to exclusionary zoning wrote,

“Although Mt. Laurel II demonstrates that courts can be effective in reducing exclusionary zoning, 32 the case also illustrates the lengths to which a remedy must go to bring about change. It took even the activist New Jersey Supreme Court several years to formulate an effective remedy. Only a few other states have invalidated zoning because it is exclusionary, and of those states, none has yet implemented an effective remedy. In fact, courts that invalidate exclusionary zoning often face criticism for venturing beyond the proper role of the judicial branch and into the political realm. Consequently, twenty years after Mt. Laurel I, many American towns retain exclusionary zoning ordinances.” (Harvard Law Review, 1995)

Legislatively, exclusionary zoning has been addressed through appeals statutes and regional fair share housing legislation. Appeal statutes are “the most common form of anti-exclusionary legislation” and “provides for state review of local zoning decisions” (Harvard Law Review, 1995). Such statutes

are present in Massachusetts, Rhode Island, Connecticut, and California. The most comprehensive of regional fair share housing legislation is New Jersey's Fair Housing Act. This act adopted the regional fair share requirement of the Mount Laurel court cases and created the Council on Affordable Housing to act in the role of the Court. The COAH "allocates fair-share burdens, formulates criteria to guide localities in meeting their fair share, and, on application of a locality, decides whether the local plan satisfies the Mt. Laurel obligation" (Harvard Law Review, 1995). The COAH is not empowered to enforce the fair share requirements, rather the enforcement is the threat of lawsuit under the Mount Laurel Doctrine. California has a similar fair share housing legislation, but it lacks a legal enforcement mechanism like the Mount Laurel Doctrine. As a result, "it has been largely ignored" (Harvard Law Review, 1995).

Related to legislative responses to exclusionary zoning is state sponsored growth management legislation. State sponsored growth management legislation is a type of comprehensive state planning, which "along with the more traditional planning goals of preserving open space and agricultural land and improving transportation patterns, most of the growth-management statutes include as enumerated goals affordable housing, economic development, and urban revitalization" (Harvard Law Review, 1995). Further it is meant to "institutionalize cooperation between state and local governments and in some cases reduce the zoning power of the locality" and reduce NIMBYism (Harvard Law Review, 1995). The most advanced state sponsored growth management legislation is in Oregon, which operates a Metro Council to administrate regional planning goals over multiple jurisdictions, including regional housing goals and an urban growth boundary for the Portland metropolitan area. Other states, like Washington, have growth management goals, but no state is as advanced in their implementation as Oregon. The implementation of a state sponsored growth management legislation is dependent on political feasibility and the effectiveness of administrative implementation (Harvard Law Review, 1995). Stephen Galowitz goes a step further than a statewide plan and argues for both formal and informal interstate cooperation to respond to exclusionary zoning (Galowitz, 1992). The trend in addressing exclusionary zoning has been to address it from beyond the local level, however, at what level beyond the local that is, is still debated.

Exclusionary zoning attempts to prevent a segment of the population from entering a community through the use of land use controls. Exclusionary zoning can take many forms, but the most common are large lot zoning, regulations that increase building size, unnecessary building codes that increase the cost of housing, restrictions on the development of multi-family housing, and floating zones. The motivations behind exclusionary zoning may be classified into fiscal zoning, public goods zoning, consumption zoning, political economic zoning, and racial exclusion. The effects of exclusionary zoning are various and debated. Restrictive zoning affects property values, but the relationship between property value and restrictive zoning is unclear. Restrictive regulations do decrease density. Further, communities with restrictive zoning regulations tend to have lower minority populations than those that do not. The remedies for exclusionary zoning have been few. The Mount Laurel Doctrine established by the New Jersey Supreme Court is one of the landmark decisions in the advancement of anti-exclusionary zoning remedies. Aside from judicial involvement the literature suggests that legislation and state-sponsored growth plans are among the methods used to limit exclusionary zoning.

Background

“I am proud that Westchester is the fourth most diverse county in all of New York State in terms of African Americans and Hispanics. We are tied with Manhattan. And Westchester’s diversity is one of our greatest strengths. And as County Executive I will defend with every tool at my disposal the right of people to live in any neighborhood in Westchester in any home they can afford. And let me say this very clear, there is absolutely no place for discrimination in our county.” (Astorino, 2013)

The quote above is taken from Westchester County Executive Robert Astorino’s 2013 State of the County Address. I start this section with this quote because it highlights a central theme of the nearly ten-year long dispute between Westchester County and HUD. Westchester County is indeed the fourth most diverse county in all of New York State in terms of African Americans and Hispanics. There are also many people that agree with the County Executive that Westchester County and its municipalities have not acted in any type of racially discriminatory zoning or land use regulations. Rather, the opinion of the County Executive, is that the County is open to all people, as long as they can afford it. HUD, however, has a history, dating back to the 1968 Civil Rights Act, that sees a connection between economic barriers to a community, such as a lack of multi-family and affordable housing options, as having a disparate impact on minority communities. As a way of reducing racial segregation in American communities, HUD ties the provision of community federal funding to a commitment to affordably further fair housing (AFFH). As part of this commitment to AFFH communities receiving federal funding must evaluate barriers and means of overcoming barriers to fair housing. As the County Executive has stated that the barriers to Westchester are economic not racial and HUD maintains a policy that ties racial and economic barriers together, there has been conflict over Westchester County’s acceptance of federal funds through HUD. The story of this legal battle is told in further detail in the sections below, however, before discussing the litigation it is important to look at the demographics of Westchester County.

The County, as a whole, is the fourth most diverse in New York State in terms of Blacks and Hispanics, but the spatial dynamics of this diversity is important to note. Westchester has a total population of 962,319 residents, of which, 56.1 percent are White Non-Hispanic, 22.8 percent are Hispanic, 13.3 percent are Black or African American, 5.5 percent are Asian, 1.8 percent are two or

more races, and .3 percent are some other race (2010-2014 ACS 5 Year Estimates). The vast majority of the county's minority populations are found in urban areas. Mount Vernon, Yonkers, and New Rochelle collectively make up 35.9 percent of Westchester's total population, but contain 68.3 percent of the county's Black population, 47.8 percent of the county's Hispanic population, and only 24 percent of the county's white population (2010-2014 ACS 5 Year Estimates). Vast suburban tracts of the county are predominantly white, with nine of Westchester's twenty-four municipalities containing white non-Hispanic populations over 80 percent (2010-2014 ACS 5 Year Estimates).

The median income for the entire County is \$83,422, however, the spatial distribution of median household incomes varies. Census tracts with a lower median household income, less than \$40,000, tend to be concentrated in the County's urban areas such as Yonkers, Mount Vernon, and New Rochelle, while suburban census tracts in nearby Scarsdale, Mamaroneck, and Harrison register median household incomes in excess of \$140,000 (2010-2014 ACS 5 Year Estimates).

These racial and economic spatial patterns in Westchester County follow tend to align with patterns of housing. The lower percentage of owner owned housing units tend to be located in the urban areas of the County with lower median incomes and higher Black and Hispanic populations.

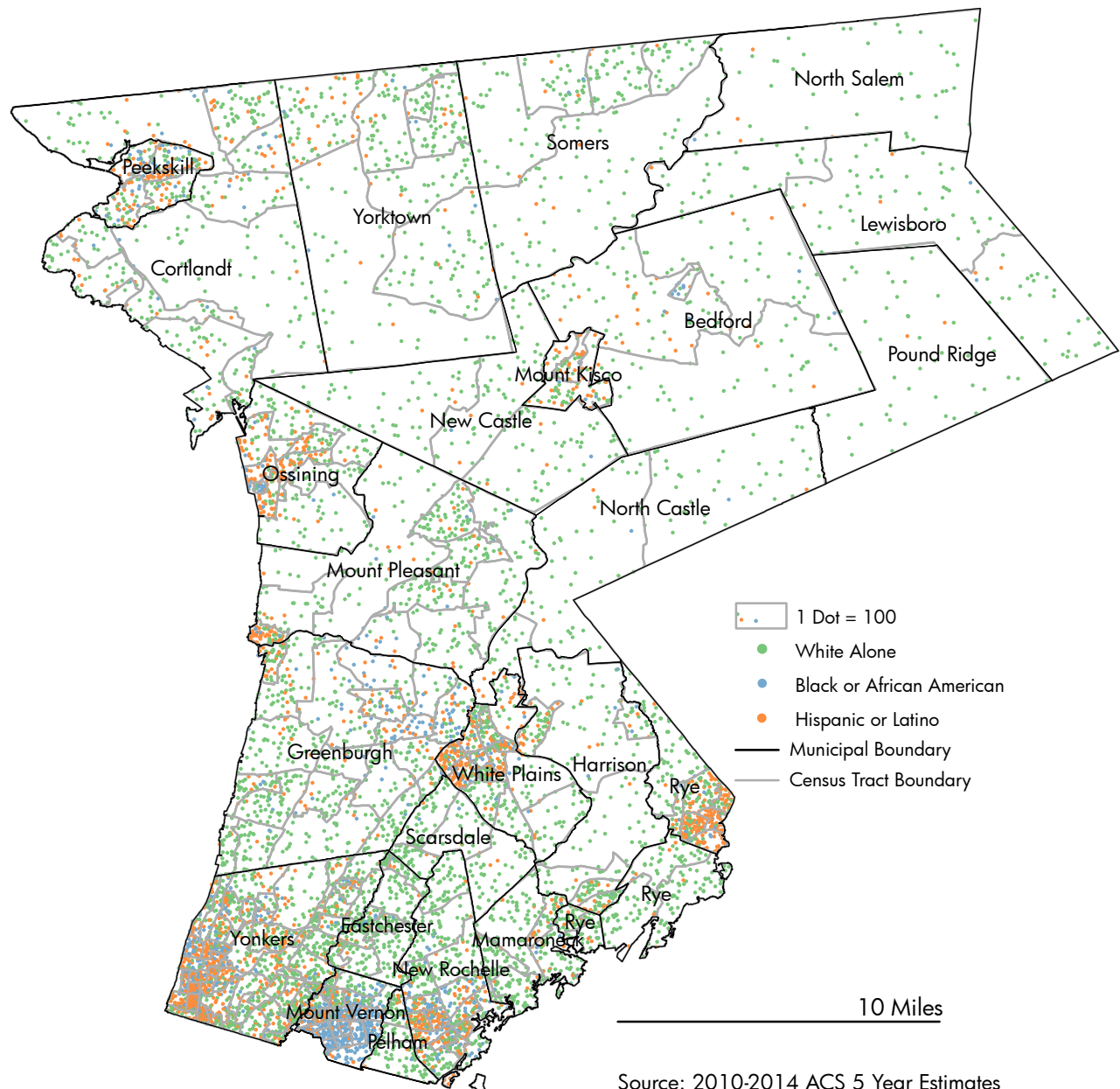
Further, there is a considerable income gap between racial groups in Westchester. White Non-Hispanics have a median household income of \$103,621, compared to \$52,992 for Black and Hispanic households (2010-2014 ACS 5 Year Estimates).

Blacks and Hispanics have approximately half the median household income of Non-Hispanic Whites and while there are high numbers of Blacks and Hispanics, they tend to be disproportionately located in the County's denser urban areas where there is an availability of rental housing. This socio-economic spatial arrangement is what would ultimately lead to the investigation of Westchester County's commitment to AFFH by the Anti-Discrimination Center of Metro New York and would result in the court case *United States ex rel. Anti-Discrimination Center v. Westchester County* (2009).

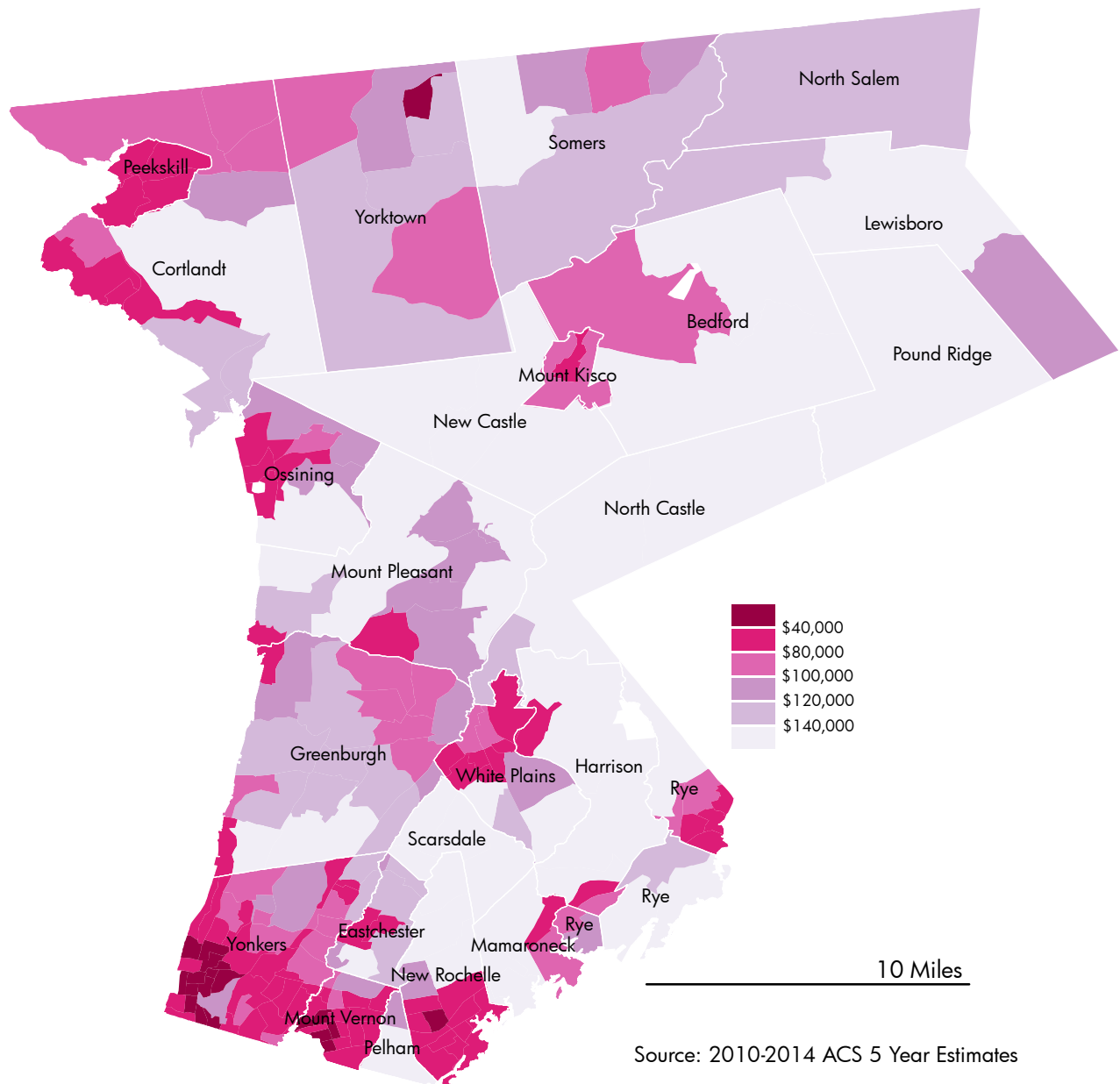
Westchester Median Household Income By Race (In 2014 Inflation Adjusted Dollars)		
Median household income (In 2014 Inflation Adjusted Dollars):		\$83,422
White Alone Householder		\$96,921
Black or African American Alone Householder		\$52,992
American Indian and Alaska Native Alone Householder		\$54,963
Asian Alone		\$123,188
Native Hawaiian and Other Pacific Islander Alone Householder		\$56,507
Some Other Race Alone Householder		\$47,424
Two or More Races Householder		\$71,729
Hispanic or Latino Householder		\$52,992
White Alone Householder, not Hispanic or Latino		\$103,621

Source: 2010-2014 ACS Estimates

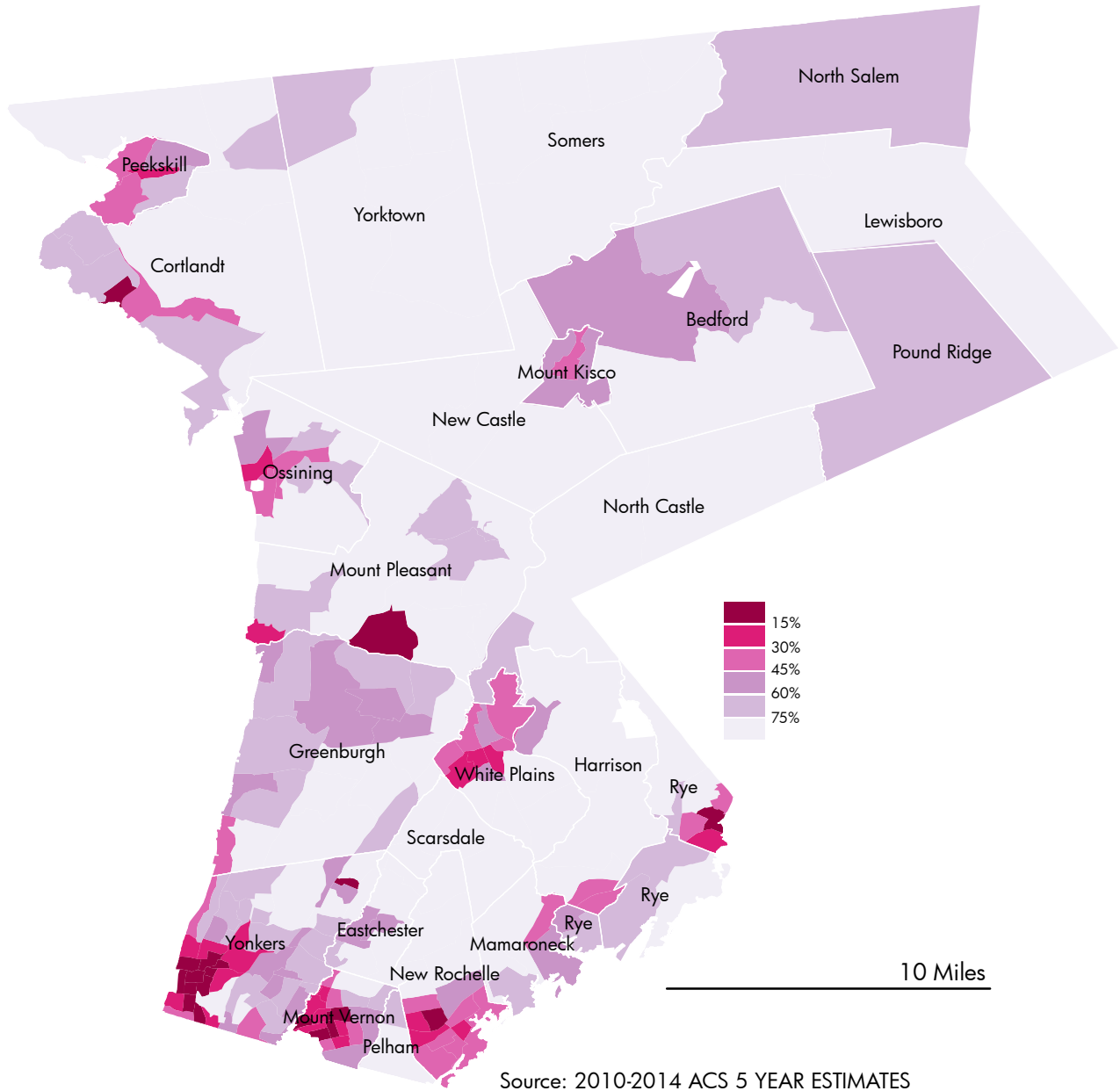
RACIAL DISTRIBUTION OF WESTCHESTER COUNTY



MEDIAN HOUSEHOLD INCOME 2014



OWNER OCCUPIED HOUSING UNITS



2006 Litigation and Consent Decree

In order to be eligible for Community Development Block Grants (CDBGs) and related funds from the United States Department of Housing and Urban Development (HUD), recipient governments must certify that they are in compliance with federal civil rights laws and are working to affirmatively further fair housing (AFFH). To be considered as AFFH requires a recipient to prepare an Analysis of Impediments (AI) “in which they identify and analyze impediments to fair housing choice within their jurisdictions, and outline appropriate actions to overcome those impediments” (Allen, 2010).

A key element of an AI is HUD’s requirement that state and local governments “list impediments experienced by members of all seven protected classes, whether caused by intentional discrimination or by policies and practices that have a harsher effect on members of protected classes, whether caused by intentional discrimination or by policies and practices that have a harsher effect on members of a protected class than on those not in a protected class” (Allen, 2010).

Violations of HUD’s AFFH provisions had largely gone unchallenged by the 1990s and 2000s (Allen, 2010). Westchester County had prepared AIs in 1996, 2000, and 2004, stating that there were no barriers to AFFH, despite the County having “Census data and other data showing that cities, towns, and villages in Westchester were dramatically segregated, and knew that nearly three-quarters of county-funded affordable housing was being built in racially segregated, African American neighborhoods” (Allen, 2010). Further the County in those AIs “made absolutely no mention of that segregation or of race-based impediments to fair housing choice. Moreover, even though the County’s own appointed Housing Opportunities Commission had identified intense opposition to affordable housing in the whitest communities and the failure of 20 municipalities to build a single unit of affordable housing pursuant to the County’s affordable housing ‘allocation plan,’ the AIs failed to mention these impediments” (Allen, 2010).

The Anti-Discrimination Center of Metro New York (ADC) began investigations into Westchester’s AFFH efforts and, in April 2006, brought a qui tam action against Westchester County under the False Claims Act, alleging that the County had submitted multiple false claims of AFFH to HUD in

order to receive \$52 million in federal funding. ADC argued that Westchester County did not consider the impact of race and, therefore, was not in compliance the terms of receiving federal funds. The matter was settled in 2009 when the United States intervened in the dispute with a settlement offer known as the consent decree.

The consent decree was a settlement agreement that allowed both parties to avoid a protracted legal battle, allowed Westchester County to avoid a ruling that could have resulted in a payment of \$156 million to the federal government, and to advance AFFH in Westchester County. The consent decree contained two main goals for AFFH in Westchester. The first was to ensure the development of a minimum 750 affordable housing units by the end of 2016. The second was for the County to adopt an implementation plan that sets benchmarks for affordable housing construction and reduces regulatory barriers to AFFH. In order to ensure compliance with consent decree a federal housing monitor, James E. Johnson, was appointed by the district court and “charged with reviewing the County’s actions, recommending additional actions needed to ensure compliance, and to resolve disputes between the United States and the County” (United States ex rel Anti-Discrimination Center v Westchester County 2013).

The first means of AFFH was to develop at least 750 affordable housing units by the end of 2016. This goal was planned to be achieved through the creation of an AFFH funding stream in Westchester County. As part of the terms of the consent decree, Westchester was required to pay \$30 million dollars to the United States, \$21.6 million of which would be earmarked for the County’s HUD account to AFFH. The County would also be responsible for appropriating an additional \$30 million dollars from County funds to AFFH. These collected funds of \$51.6 million were to be used by the County for “land acquisition, infrastructure improvement, construction, acquisition, or other necessary direct costs of development of new affordable housing units that AFFH” (USA ex rel. ADC v. Westchester County 2009 Stipulation and Order of Settlement and Dismissal). The consent decree provides specific specifications for where development should occur, acceptable AMI percentages, and a timeline in which progress should be made. In this manner the 750 affordable units were

meant to serve as a means of AFFH in Westchester County.

The second means of AFFH was to require the County to develop an implementation plan for AFFH that sets benchmarks for affordable housing goals and reduces regulatory barriers to fair housing practices. The consent decree requires that the County “provide to the Monitor and the Government a plan setting forth with specificity the manner in which the County plans to implement the provisions of this Stipulation and Order...concerning the development of Affordable AFFH Units (the “implementation plan”)” (USA ex rel. ADC v. Westchester County 2009 Stipulation and Order of Settlement and Dismissal). The implementation plan may be accepted or rejected by the Monitor’s discretion. The implementation should provide timetables and benchmarks for achieving AFFH goals and identifying barriers to AFFH and proposed actions to overcome barriers. A key element of the consent decree is the requirement that the County assess the barriers to AFFH in local regulations, in particular zoning codes. If the County deems a municipality’s zoning code to restrict AFFH goals through exclusionary zoning, the County is obligated to pursue the municipality in changing its zoning code by legal means if necessary. In this way the County will have a centralized plan for implementation of AFFH goals and means of overcoming existing barriers to AFFH.

2011 Litigation

One of the obligations of the 2009 consent decree was for Westchester County to “promote, through the County Executive, legislation currently before the Board of Legislators to ban source of income discrimination in housing” (USA ex rel. ADC v. Westchester County 2009 Stipulation and Order of Settlement and Dismissal). Source of income discrimination is discrimination based upon a person’s source of income, in particular income that comes from state or federal assistance. The piece of legislation that the consent decree refers to was a piece of legislation that sought to enact penalties on landlords practicing source of income discrimination and make it illegal for landlords to reject tenants based on their source of income. The legislation was put in front of the County Board of Legislators in 2009 during the time of the consent decree and was advocated for by, then County Executive, Andrew Spano. Spano had sent letters to County Legislators and County housing advo-

cates to push the legislation, but the 2009 term ended before the legislation could be passed. When it was reintroduced in 2010 the legislation was scaled back in scope, but was passed by the County Board of Legislators. The legislation was then vetoed by the newly elected County Executive Robert Astorino. According to the United States Court of Appeals, “It is undisputed that, at the reintroduction of the legislation in January 2010, newly elected County Executive Robert Astorino took no steps to promote the legislation and subsequently vetoed the amended version on June 25, 2010” (United States ex rel Anti-Discrimination Center v Westchester County 2013).

When the County submitted its revised Analysis of Impediments (AI) to HUD on July 11, 2011, HUD rejected the AI because it did not “meet the requirements of the consent decree because it did not incorporate the corrective actions that HUD had earlier specified, including promotion of source of income legislation or plans to overcome exclusionary practices” (United States ex rel Anti-Discrimination Center v Westchester County 2013). As a result, HUD removed Westchester County’s certification of affirmatively furthering fair housing, which discontinued their federal funding from HUD. Westchester appealed to the Federal Housing Monitor, who upheld HUD’s decision, based on the notion that affirmatively furthering fair housing requires an active role in removing barriers to fair housing, which the veto of the source of income legislation was in direct contrast to. The Monitor’s decision was appealed to the Appellate Court where it was upheld and Westchester’s funding denied.

2013 Litigation

The Federal Housing Monitor’s November 2011 report stated that the County was obliged to analyze the effect of zoning ordinances on its Analysis of Impediments (AI). The Monitor’s report stated that the County “should assess the impact of each of the following zoning practices or explain why the analysis of the listed practices would not be to understanding the impact of the zoning ordinances taken as a whole:

- Restrictions that limit or prohibit multifamily housing development,
- Limitations on the size of a development;

- Limitations directed at Section 8 or other affordable housing, including limitations on such developments in a municipality;
- Restrictions that directly or indirectly limit the number of bedrooms in a unit;
- Restrictions on lot size or other density requirements that encourage single-family housing or restrict multifamily housing; and
- Limitations on townhouse development” (Monitor’s Report and Recommendation Regarding Dispute Resolution, 2011)

The County prepared zoning analyses based on the Monitor’s recommendations and submitted them as part of the County’s AI to HUD. HUD rejected these reports claiming that “the County’s submissions contained flawed data analysis, failed to address whether zoning practices were exclusionary under state and federal law, and lacked adequate strategies for bringing about changes to problematic zoning practices in some of the County’s municipalities” (County of Westchester v. United States Department of Housing and Urban Development 2015). On March 25, 2013 HUD notified the County that the \$7.4 million dollars that had been withheld from the County as a result of the County’s unacceptable AI would be redistributed on April 25, 2013 if an acceptable AI was not submitted. The County submitted a revised AI before the deadline and filed suit against HUD. The County’s claims were dismissed by the New York State Appellate Court in August 2013 based on HUD being within its discretion as a federal agency to set standards for its funding. The dismissal was upheld again in February 2015 by a federal circuit court.

Federal Housing Monitor’s Zoning Analysis

In response to HUD’s rejection of Westchester County’s zoning analyses, the Federal Housing Monitor prepared two reports, analyzing zoning in Westchester County. The first report, the Berenson Report, was filed on September 13, 2013 and analyzed the impact of zoning on socioeconomic diversity. The second report, the Huntington Analysis, was filed on September 8, 2014 and analyzed the impact of zoning on racial composition. Neither report is a definitive report on exclusionary zoning, but rather a look at where there is a potential for exclusion to exist.

In 1975 *Berenson v Town of New Castle* was brought to the Appellate Division of the New York State Supreme Court. The court case involved the complete restriction of multi-family housing in the town of North Castle in Westchester County, approximately 35 miles north of New York City. In 1972 Mitchell Berenson, the owner of a piece of property in the town, wanted to develop an age restricted condominium, but his application was denied by the town board. Berenson then brought his case to trial, in which the New York State Appellate Court found that not only was the zoning restriction unconstitutional, but that municipalities are required to consider regional housing need in their zoning code. The Court established a two pronged test in order to determine whether a zoning ordinance took into consideration regional needs. First, the zoning code must meet the housing needs of the population within the municipality that is being zoned. Second, the zoning code must meet the needs of regional housing needs. A municipality is not required to meet regional needs if the regional need has already been met, whether inside or outside the municipality. The Court acknowledges its own limitations in serving as a regional planner and suggests that regional planning is something that should be worked towards.

“While the people of New Castle may fervently desire to be left alone by the forces of change, the ultimate determination is not solely theirs. Whether New Castle should be permitted to exclude high density residential development depends on the facts and circumstances present in the town and the community at large. Until the day comes when regional, rather than local, governmental units can make such determinations, the courts must assess the reasonableness of what the locality has done.” (Berenson v Town of New Castle 1975)

The original appellate court ruling set a number of units to be built in the Town of New Castle by 1987, however, this determination was later overturned in the Second Division of the Appellate Division of the New York State Supreme Court. The reasoning behind the removal of the unit mandate was the lack of a thorough fair share housing analysis to support the number of units to be constructed. This second ruling otherwise reaffirmed the original ruling of the case.

“Although we therefore find that Special Term erred in mandating a “fair share” unit goal, there is little doubt but that the record establishes an unsatisfied local and regional need for multifamily housing on the part of what we shall simply call the less affluent residents of the New York City metropolitan area. Indeed, the town does not argue to the contrary. And while multifamily zoning cannot insure that such units will actually be built, or that, if built, they will be affordable by families of modest means, the absence of such zoning, as noted by Special Term, surely precludes any such construction. As a court of law, we cannot provide any lasting solution for the complex problems posed by cases such as this, but we can and must in appropriate cases require a developing municipality such as the Town of New Castle to cease its policy of immunizing itself from the ordinary incidents of growth and “confront the challenge of population growth with open doors” (Golden v Planning Bd. of Town of Ramapo, 30 N.Y.2d 359, 379, supra)” (Berenson v Town of New Castle 1979).

The test created in Berenson would be the basis for the first analysis performed by the Westchester Housing Monitor was a Berenson Analysis that sought to identify exclusion “on the basis of socioeconomic status because they limited affordable housing or made the development of affordable housing practically infeasible” (Westchester Housing Monitor, 2014). The analysis identified seven towns with such exclusionary policies including, Croton-on-Hudson, Harrison, Lewisboro, Mamaroneck, Ossining, Pelham Manor, and Pound Ridge. After identifying the municipalities and policies the Housing Monitor has worked with each town to rethink their zoning. Mamaroneck, Ossining, and Pound Ridge were singled out by the Housing Monitor as being active and cooperative in reforming their zoning codes.

The Berenson Analysis “took an initial step in identifying whether the municipal zoning ordinances were problematic under Huntington” but it did not “undertake a comprehensive review of each municipality’s compliance with the federal standard for exclusionary zoning as specified in Section VIII of the 1968 Fair Housing Act, which looks at whether zoning “1) perpetuates clustering by restricting multifamily or two-family housing to districts that have disproportionately high minority household populations; or 2) disparately impacts the County minority household population by restricting the development of housing types most often used by minority residents” (Johnson, 2014). In order to do this, the Housing Monitor performed a Huntington Analysis.

The Huntington Analysis

The Huntington Analysis is based on the court case Huntington Branch, NAACP v. Town of Huntington (1987). In 1980 Huntington, NY had a population of 200,000, 95 percent of which was

White and 3.3 percent of which was Black. The Black population was clustered around subsidized housing projects, resulting in 70 percent of the town's Black population to live in one of six census tracts. Of the town's 48 census tracts, 30 had Black populations of less than 1 percent (Huntington Branch, NAACP v. Town of Huntington 1988). Responding to the need for more subsidized housing and the situation of racial segregation an organization, Housing Help Inc. (HHI), sought to have a suitable site rezoned in order to accommodate the development in a predominantly white area. The rezoning was rejected by the Town Board. In response the Huntington Branch NAACP alleged that the town of Huntington had violated the Title VIII of the Civil Rights Act of 1968, better known as the Fair Housing Act. After moving through several courts and a prolonged litigation, the United States Court of Appeals, Second Circuit established a two prong test to determine first, whether the zoning perpetuated racial clustering and second, whether the zoning had a disparate impact. The town of Huntington's zoning failed both of these tests and the Court ruled in favor of the Huntington Branch NAACP. This court case established a precedent for establishing *prima facie* in zoning discrimination cases that would be utilized by the Federal Housing Monitor in the preparation of the Huntington Analysis.

In preparation for the Huntington Analysis the Housing Monitor employed the efforts of two housing consultants to look at demographic data including “1) zoning patterns where Blacks and Hispanics live within the County 2) a comparison of each municipality to the region 3) an overlay of the municipality zoning including breakdowns by race and Hispanic national origin” (Westchester Housing Monitor, 2014). An additional analysis was made of zoning ordinances that serve as “(i) restrictions that limit or prohibit multifamily or two-family housing development; (ii) limitations on the size of a development; (iii) limitations directed at Section 8 or other affordable housing, including limitations on such developments in a municipality; (iv) restrictions that directly or indirectly limit the number of bedrooms in a unit; (v) restrictions on lot size or other density requirements that encourage single-family housing or restrict multifamily housing; and (vi) limitations on townhouse development” (Johnson, 2014).

This information was used in the Huntington Analysis to determine whether Westchester municipalities were in violation of Section VIII of the 1968 Fair Housing Act. The analysis found prima facie violations in six Westchester municipalities, Harrison, Larchmont, North Castle, Rye Brook, Lewisboro, and Pelham Manor [see chart below].

<i>Prima Facie Evidence of Violations of One or Both Huntington Prongs</i>	
<i>Huntington Prong 1: Prima Facie Evidence of Perpetuation of Clustering</i>	
Harrison [<i>Berenson Category 3</i>]	59.7% of Harrison's minority household population resided in a single zoning district, which was zoned for as-of-right two-family housing development.
Larchmont	50.4% of Larchmont's minority household population resided in the only zoning districts allowing as-of-right multifamily housing development.
New Castle	North Castle's only zoning district permitting as-of-right two-family housing development was home to 30.8% of North Castle's minority residents, and minority residents made up 34.5% of the district's household population.
Rye Brook	50.8% of Rye Brook's minority household population resided in the sole zoning district providing a meaningful supply of two-family housing, and minority residents made up 41.3% of the district's household population.
<i>Huntington Prong 2: Prima Facie Evidence of a Disparate Impact Violation</i>	
Harrison [<i>Berenson Category 3</i>]	Harrison restricts as-of-right multifamily housing development to 0.3% of its total land area, has not adopted the model affordable housing zoning ordinance, and provides no affordable housing zoning ordinance.
Lewisboro [<i>Berenson Category 3</i>]	Lewisboro restricts as-of-right multifamily housing development to 0.8% of its total land area, does not possess a sufficient diversity of housing types, and has not adopted the model affordable housing zoning ordinance.
Pelham Manor [<i>Berenson Category 3</i>]	Pelham Manor restricts as-of-right multifamily and two-family housing development to one district, prohibits mixed-use and accessory apartment housing, and has not adopted the model affordable housing zoning ordinance.

Source: Johnson, 2014

The Federal Housing Monitor came to the conclusion at the end of these two analyses that,

“Twenty-four out of 31 municipalities provide opportunities to develop affordable housing and four of these municipalities have zoning codes that provide sufficient opportunities for affordable housing to meet regional need and are exemplary in terms of their efforts to provide opportunities for affordable housing. Seven municipalities, however, have restrictions on multifamily housing and other sources of affordable housing that would meet the definition of exclusion under the Berenson line of cases. Additionally, some municipalities, whether likely to be deemed exclusionary under Berenson or not, have evidence that limitations on multifamily zoning might have a disparate impact on certain minority groups, suggesting that they might be deemed exclusionary under Hunting-

ton. Therefore, the County's conclusion that exclusionary zoning does not exist anywhere in Westchester is not supported by its own data." (Housing Monitor's Report via County of Westchester v. United States Department of Housing and Urban Development 2015)

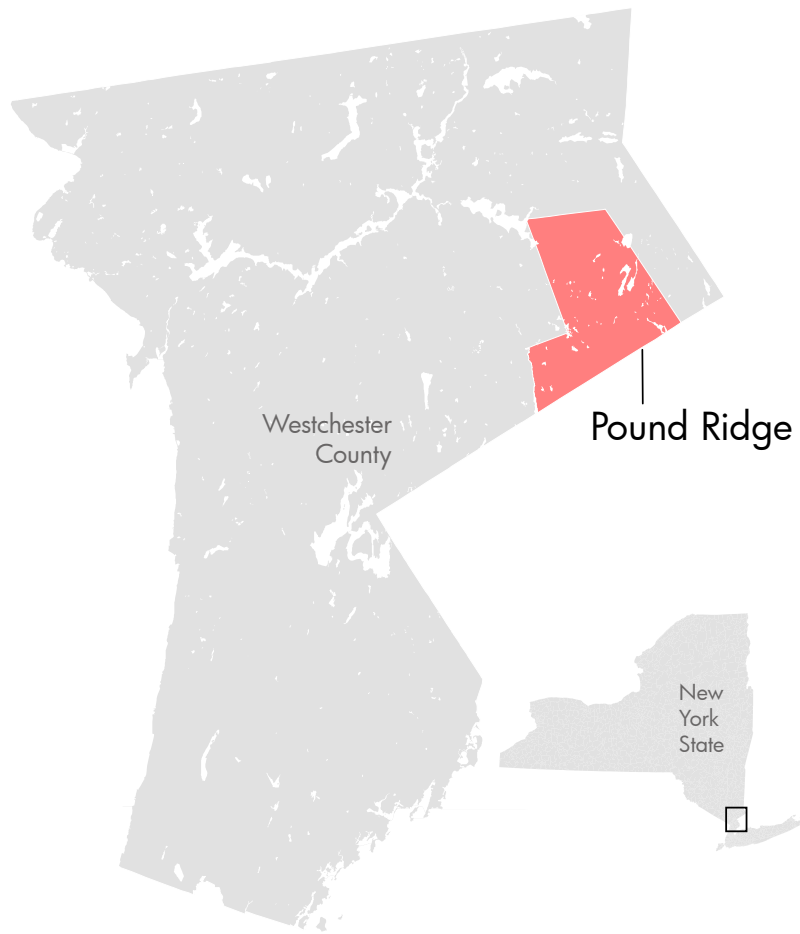
On October 24, 2014 the federal government notified the Housing Monitor and Westchester County that if Westchester adopted the Housing Monitor's reports that would suffice as an acceptable AI. Westchester County declined the offer by the federal government and has not incorporated any of the Housing monitor's findings into its reports.

2015 Litigation

On February 3, 2015 HUD informed Westchester County that as a result of not receiving a grant for FY 2012, the County no longer a qualified as a Community Development Block Grant urban county and HOME participating jurisdiction. As a result, the County's 2013 and 2014 funding, approximately \$10 million dollars, would be reallocated. In May the County informed HUD that it would not be applying for FY 2015-FY 2017 grants, however, the County appealed to the courts for the distribution of its FY 2013 and FY 2014 funding. In September 2015 a court ruling determined that "HUD may reject a jurisdictions application for funding because it determines that the jurisdiction's analysis of impediments fails to adequately consider the potential exclusionary impact of the jurisdiction's zoning laws" (County of Westchester v. United States Department of Housing and Urban Development 2015). As a result, Westchester's FY 2013 and FY 2014 funding was permitted to be reallocated.

Chapter 1: Pound Ridge

Among the municipalities that were found exclusionary by income under the Berenson Analysis was Pound Ridge. Pound Ridge was not found exclusionary under the Huntington Analysis, however, this was due to the fact that the number of minorities within Pound Ridge was too low to determine if zoning created racial clustering. After the Berenson report was filed Pound Ridge worked with the Office of the Federal Housing Monitor to amend its zoning code to allow multi-family housing by special permit. Pound Ridge also made efforts to reach out to potential housing developers and participated in a workshop hosted by WXY Architects on developing multifamily housing. As a result of these efforts, in March 2015 the Federal Housing Monitor removed Pound Ridge from the Monitor's list of communities that limited affordable housing development (Journal News, 2014).



Location of Pound Ridge, NY within Westchester County

Pound Ridge is a low density exurban community in the eastern part of Westchester County, approximately 40 miles north of New York City. The town is composed of single family residential homes on large lots, a small commercial district that supports several restaurants and small businesses, and several other low intensity land uses. Its narrow roads, scenic landscape, and large tracts of open space give the town a quiet and rural character.

The town has a population of 5,170. Its racial composition is 89.6 percent non-Hispanic White, 6.4 percent Asian, 3.2 percent Hispanic, and .8 percent Black (2010-2014 ACS 5 Year Estimates). The median household income for Pound Ridge in 2014 was \$173,839 and the median house value for all owner occupied housing units was \$896,700 (2010-2014 ACS 5 Year Estimates).

Important environmental features to consider in Pound Ridge are water bodies, wetlands, and steep slopes. The town contains two separate watersheds systems with reservoirs that provide drinking water for New York City and Stamford, CT. The water quality of these reservoirs are a particularly sensitive topic where development is concerned. New York State Department of Environmental Conservation and New York City Department of Environmental Protection review any project that may affect water quality. The reservoirs themselves and their surrounding land is owned by Acquarion Water Company, adding yet another interested party to development conversations. The town's wetlands pose another concern for development, in particular if they feed into any of the town's reservoirs. Another environmental concern is the town's steep slopes. Many areas of the town have slopes in excess of 15%, with some areas in excess of 25%, making development in these areas potentially expensive, dangerous, and/or impractical.

Pound Ridge lacks a municipal sewer system, thus requiring town properties to operate on individual well and septic systems. Well and septic systems typically require a minimum one-acre lot for sub-surface drip dispersal of effluent. The size of the drip field may vary depending on a site's topography and other environmental features.

The town has seven zoning districts, three residential zones, three special purpose commercial zones,

and one nursery zone. The vast majority of the town is composed of one of its three single family residential zones, R-1A has a one-acre lot minimum, R-2A has a two-acre lot minimum, and R-3A has a three-acre lot minimum. The special purpose commercial zones comprise the Scott's Corner commercial area of town and contain several restaurants, small shops, a grocery store, and a gas station. The nursery zone was created to accommodate the Pound Ridge nursery.

Chapter 2: The Town Code

The town of Pound Ridge was working on revising its zoning code at the same time that the Federal Housing Monitor released the Berenson Report in 2013. The report identified Pound Ridge's zoning code as potentially exclusionary, as it only provided multi-family housing for seniors. The town worked with the Federal Housing Monitor to explore new options for multi-family and affordable housing. The new ordinances that were adopted expanded the town's special use permit from permitting multi-family senior housing to permitting a broader variety of multi-family housing. The new ordinances can be divided into two categories: first, ordinances that regulate site selection; second, ordinances that regulate site design. As a result of adopting these ordinances, as well as several good faith efforts to advance the development of multi-family housing, Pound Ridge was removed from the Federal Housing Monitor's Berenson list and was no longer considered potentially exclusionary.

The goal in adopting these amendments for the town was compliance with Federal Monitor's terms as stated in the Berenson report, provided that the amendments 1) maintains community character, meaning that it provides for in-scale development and maintenance of the town's rural aesthetic; 2) protects and considers environmental resources, such as steep slopes, wetlands, water bodies, and reservoirs; 3) meets the infrastructural capacity of the town, such as wastewater treatment, fire and emergency services, maintenance of road capacity and traffic conditions, and school capacity.

In order to better understand the reasoning and goals for individual ordinances, each ordinance is given an intent. Intent is categorized by the three previously mentioned goals of zoning; Community Character, Environment, and Infrastructure; as well as a fourth category, Procedural/Incentive. This last category are ordinances that either incentivize a particular type of development or serve to clarify procedure. The reasoning provided for the zoning ordinances in this chapter is informed through two separate interviews conducted with Pound Ridge Town Supervisor Richard Lyman.

Zoning Site Selection

The Town of Pound Ridge has enacted four ordinances that regulate the lots where multi-family

housing can be constructed. These regulations are intended to accommodate wastewater treatment, enable fire truck access, encourage development in Pound Ridge's main commercial area, protect water resources, and ensure structural stability.

The first of these ordinances is a minimum lot size, requiring a minimum 20 acre lot for multi-family housing in R-1A and R-2A Districts and a 30 acre minimum lot for multi-family housing in R-3A Districts. This ordinance is intended to accommodate the wastewater treatment facilities of a multi-family housing development with no sewer, which requires a large drainage field. Nine vacant lots meet this requirement. Whether 20 acres and 30 acres are appropriate sizes for multi-family housing development is not clear. Town Supervisor Richard Lyman speaking on the matter of the minimum lot size said, "In some respects it is an arbitrary number because there are sites that may be under 20 acres that could be suitable to handle that, but for the most part, if you know the topography of Pound Ridge at all, most of the site's that we have are very rocky, very wet, and fragmented in how they would accommodate a development of that size. So is there a magic number there of 20 acres or 30 acres? No. There just happens to be the way it works out" (Interview with Richard Lyman 1/16/16).

The second ordinance requires a site to be located within a quarter mile of one of the town's four major town roads. This provision is meant to accommodate fire truck access. The reasoning is that Pound Ridge's secondary roads are narrow and difficult to navigate. 86 percent of vacant lots in Pound Ridge meet this requirement.

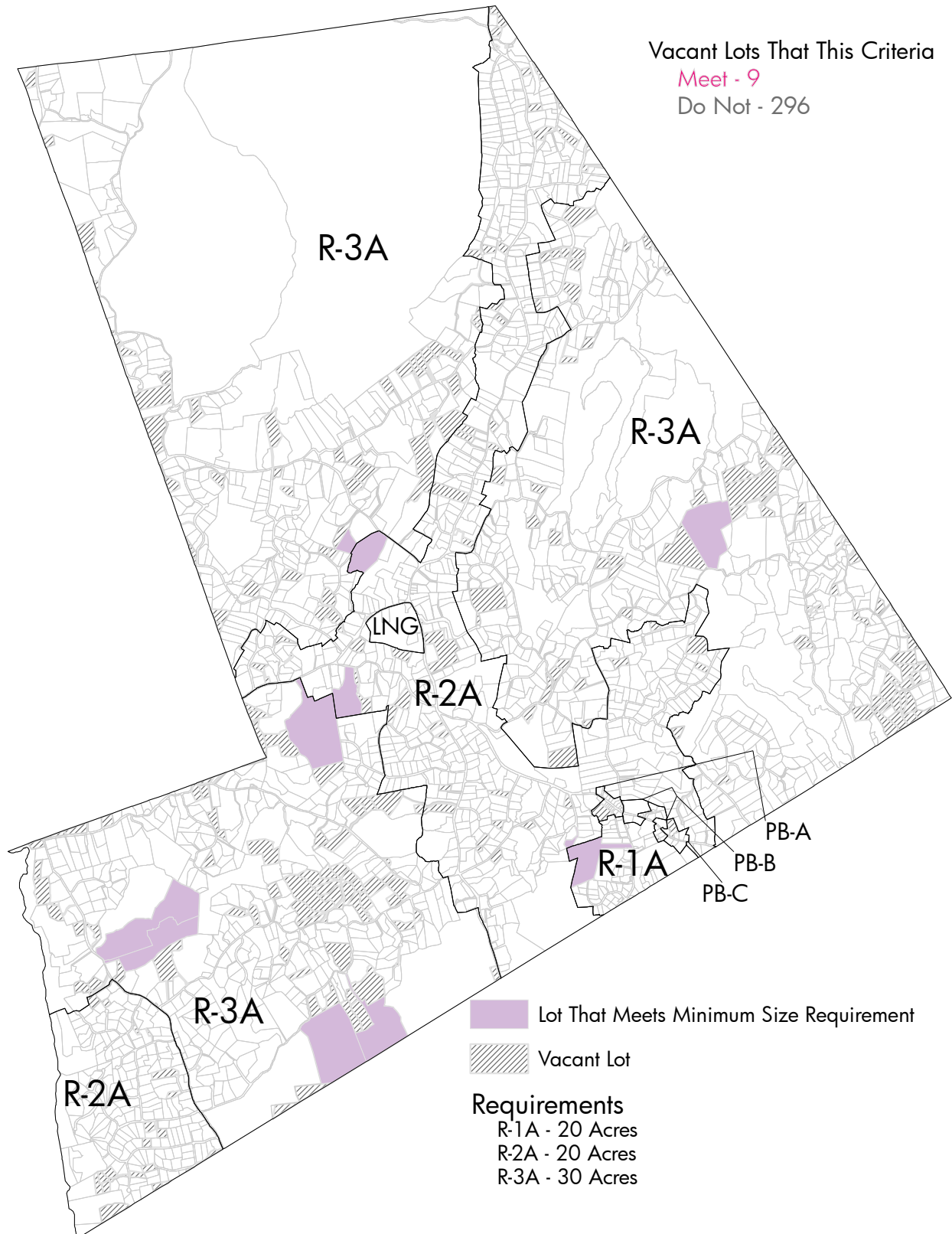
The third ordinance allows for a reduction in the minimum lot size for lots within a quarter mile of the town's commercial area, Scott's Corner. A multi-family housing development in Scott's Corner could potentially serve as a catalyst for a wastewater treatment system that could serve the new development and existing businesses in Scott's Corner. This type of development would allow the town to apply to the County for funds to provide the infrastructure as it would serve a larger public good. In the case of a singular private development the town would not be eligible to apply for these funds.

The fourth ordinance restricts the aggregate of the slopes in excess of 25% and the wetlands, watercourses and water bodies to constitute less than 45% of the gross lot area. This provision was enacted with the intent of protecting water resources and to prevent development on steep terrains, which are not suited for development. Pound Ridge has reservoirs that feed into the New York City water supply as well as the Stamford, CT water supply. Wetlands are a common feature throughout the town. Many streams and creeks feed directly into reservoirs, and as such, require careful management of water quality. Of Pound Ridge's 305 vacant lots, 262 meet this criteria.

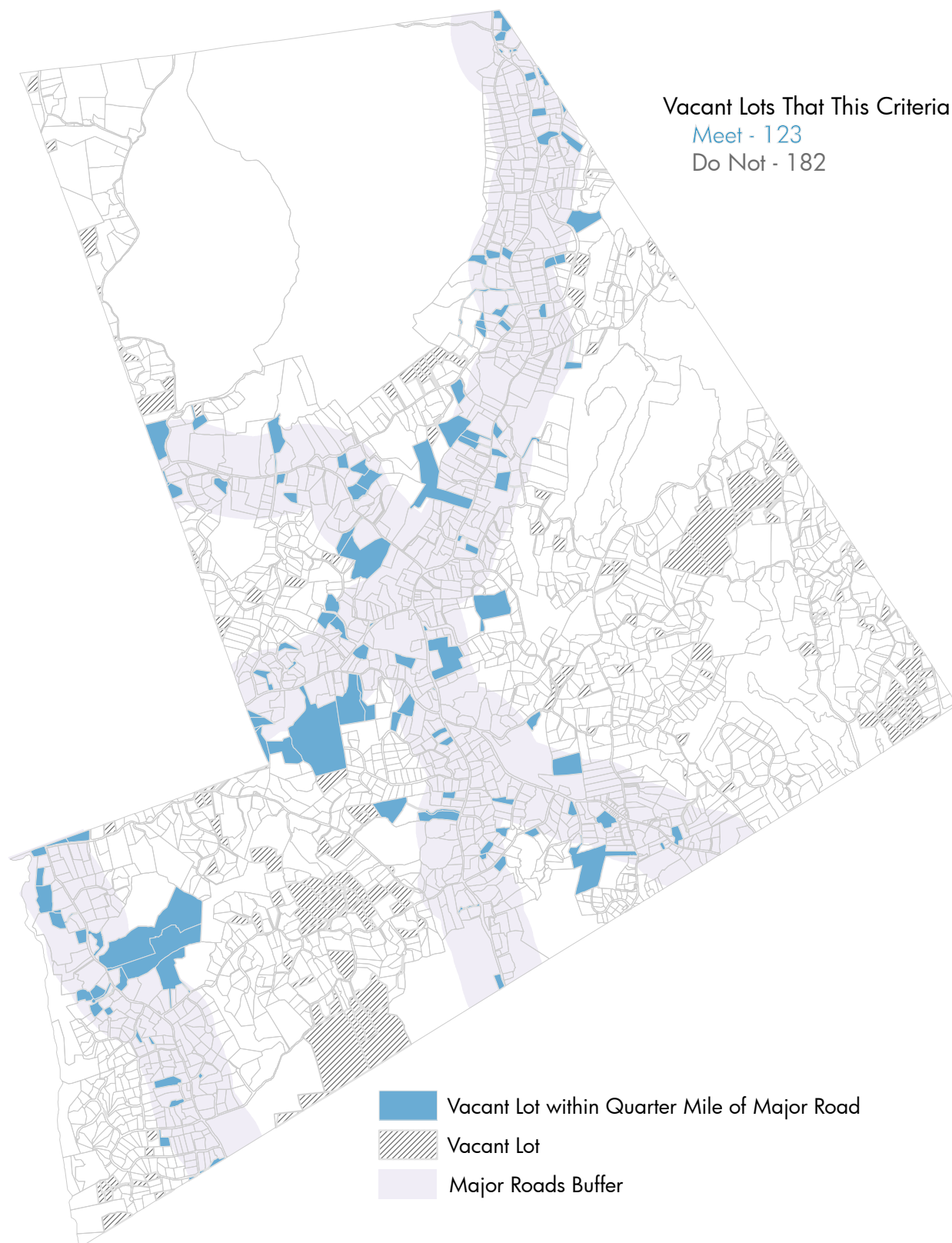
After considering these four regulations seven lots were found to be suitable for multi-family housing development. After speaking with the Town Supervisor Richard Lyman about these findings, he indicated that there are likely other sites that may be available for multi-family housing development with a zoning variance.

ZONING SITE SELECTION SUMMARY		
ORDINANCE	INTENT	Number (%) of Vacant Lots That Meet Criteria
The 'multifamily housing' site shall have an area of not less than 20 acres in the R-1A and R-2A 'Districts' and not less than 30 acres in the R-3A 'Districts'	Infrastructure	9 (3%)
For lots which have road frontage within 1/4 mile from the intersection of Westchester Avenue and Trinity Pass Road, the...site shall have an area of not less than the minimum 'lot area' required for 'one-family dwellings'	Infrastructure	123 (40%)
The aggregate of the slopes in excess of 25% and the wetlands, watercourses and waterbodies, shall constitute less than 45% of the gross 'lot area'	Environment	2 (1%)
The lot shall have road frontage not more than 1/4 mile in travel distance from at least one of the Town's major roads	Infrastructure	262 (86%)
ALL	-	7 (2%)

LOTS THAT MEET MINIMUM SIZE REQUIREMENTS



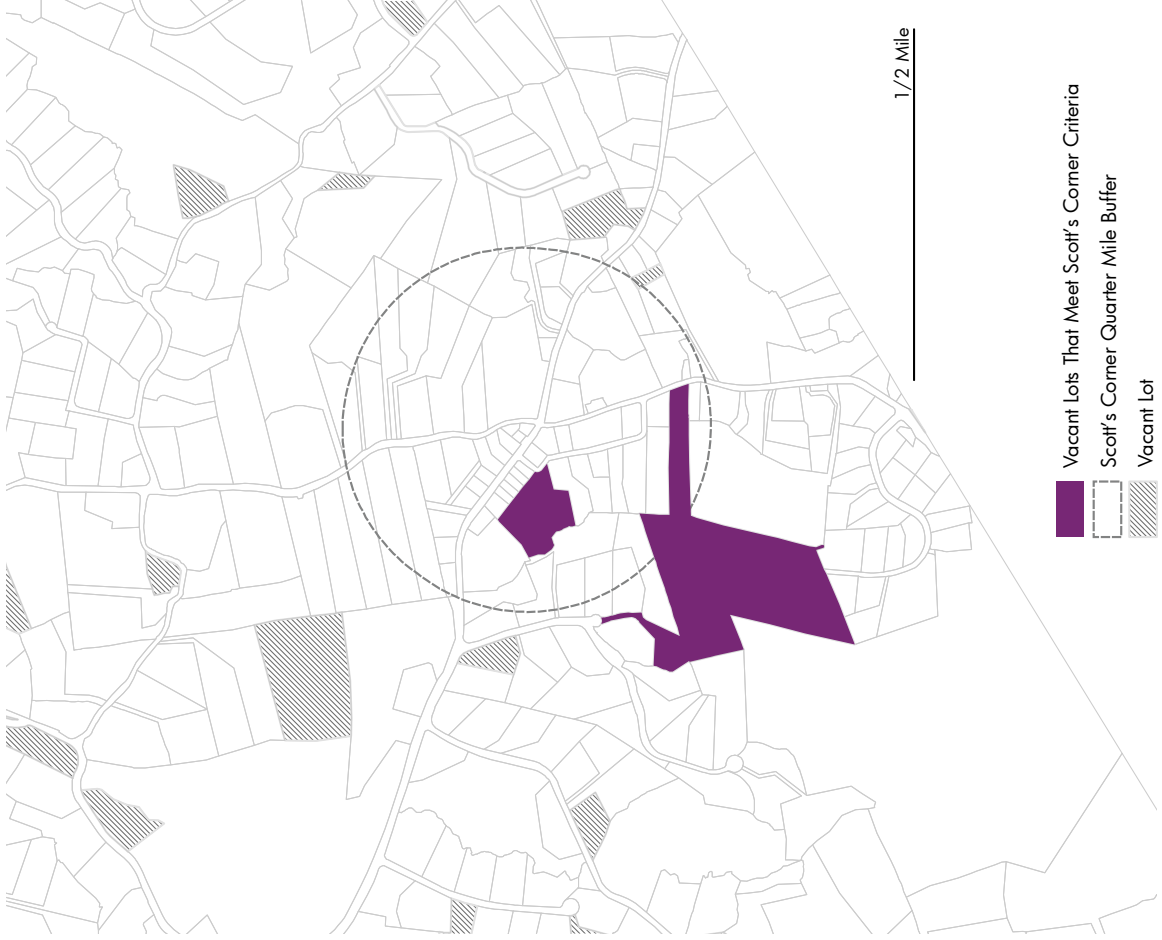
VACANT LOTS WITHIN QUARTER MILE OF MAJOR ROAD



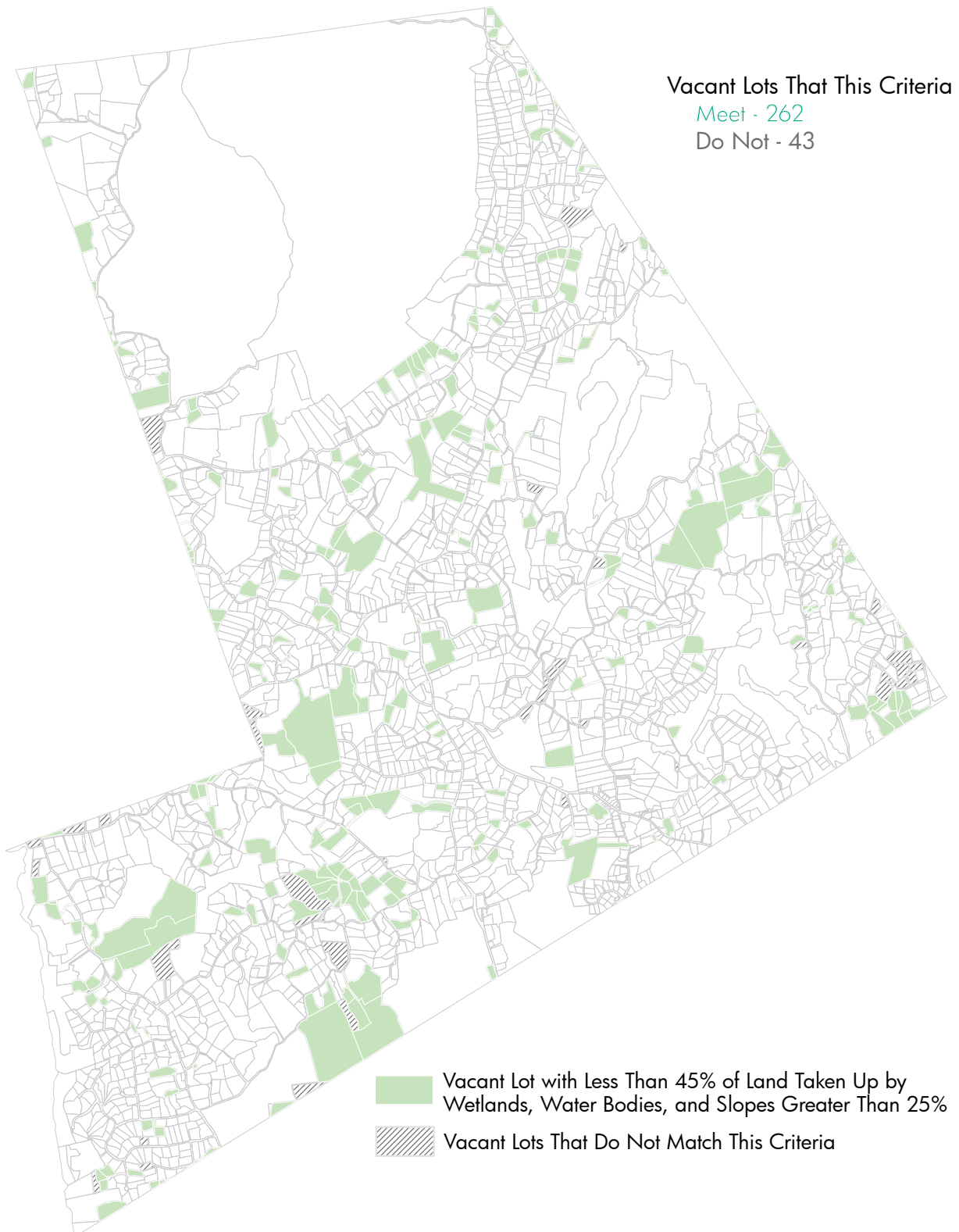
VACANT LOTS THAT MEET SCOTT'S CORNER CRITERIA



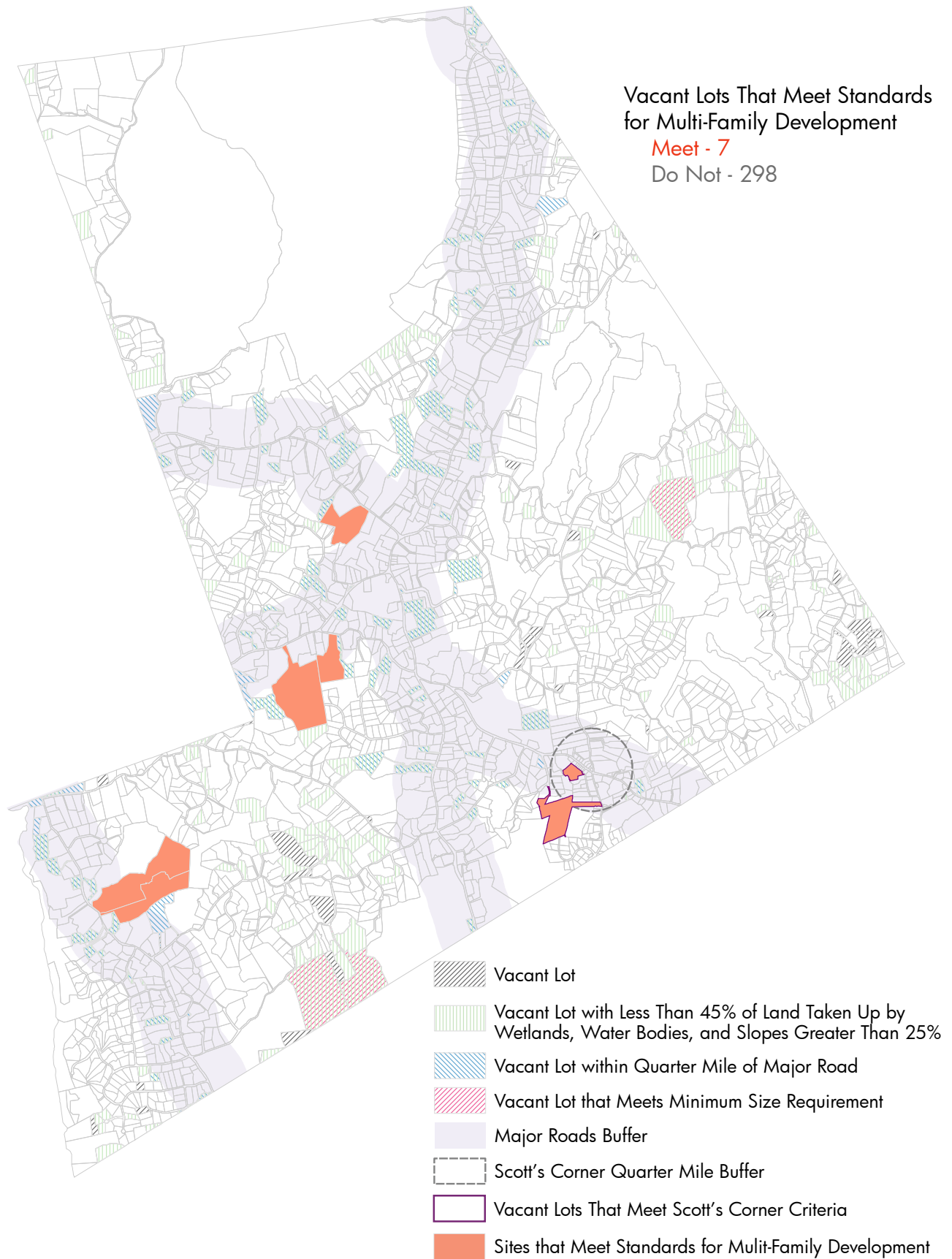
Vacant Lots That This Criteria
 Meet - 2
 Do Not - 303



WATER BODIES, WETLANDS, AND SLOPES GREATER THAN 25 PERCENT



REQUIREMENTS FOR MULTI-FAMILY HOUSING LOTS



Zoning: Site Design

Once a lot is selected as a development site, there are up to eighteen ordinances that affect how that lot can be developed. These eighteen ordinances will be looked at in this section by their intent, which falls into one of four categories: Infrastructure, Community Character, Environment, or Procedural/Incentive.

Infrastructure

There are six ordinances that regulate site design that are intended to maintain Pound Ridge's infrastructural capacity. These ordinances place a cap on the number of units on any given site, require the provision of a public road, make provisions for recreational facilities, sets parking minimums, requires adequate wastewater treatment, and requires a homeowners' association to oversee common facilities.

ZONING SITE DESIGN: INFRASTRUCTURE	
ORDINANCE	REASONING
There shall be no more than 50 'dwelling units' permitted in any 'multifamily housing' development.	Traffic concerns
The site shall have direct access from a public road.	Basic transportation requirement
Common indoor and outdoor recreational facilities may be provided on site in lieu of recreation fees.	Provision of adequate town recreation facilities
2.0 parking spaces for each dwelling unit; plus for each dwelling unit having bedrooms in excess of two there shall be an additional 0.5 for each bedroom, plus 0.5 outdoor, unreserved for visitor use.	Provision of adequate parking

“Multifamily” “dwelling units” shall not be serviced by individual wells and septic systems, but rather by communal or shared sewage disposal and water supply facilities.	Provision of adequate wastewater treatment
A homeowners’ association shall be formed for purposes of owning, operating and maintaining all common land areas and all common facilities on the site.	Provision of a management authority

Community Character

There are six ordinances that regulate site design that are intended to maintain Pound Ridge’s community character. These provisions determine site coverage, the number of units, and regulate the bulk of multi-family buildings to preserve Pound Ridge’s rural aesthetic.

ZONING SITE DESIGN: COMMUNITY CHARACTER	
ORDINANCE	REASONING
Maximum “building coverage” limitations: R-3A: 5% R-2A: 7.5% R-1A: 15%	Prevent overbuilding
All “dwelling units” shall be permitted a maximum “height” of 2 1/2 stories or 35 feet, whichever is less.	Control mass and scale
“Multifamily” units may be located in attached or detached “structures”; there shall be no more than four in any one dwelling “building” and the maximum building length shall not exceed 100 feet.	Control mass and scale
The average area of all “multifamily” “dwelling units,” shall not exceed 2,500 square feet, and no individual “dwelling unit” shall contain in excess of 3,000 sq ft.	Control mass and scale

<p>“The maximum number of ‘dwelling units’ shall be determined by dividing the gross ‘lot area’ (excluding slopes in excess of 25% and wetlands, watercourses and water bodies, as defined in the Town of Pound Ridge Fresh-water Wetlands Law) by the minimum ‘lot area’ required for ‘one-family dwellings’ in the zoning ‘district’ in which it is located, multiplying that result by four and rounding down to the nearest whole number.</p>	<p>Prevent overbuilding</p>
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Procedural/Incentive

There are six ordinances that fall within the Procedural/Incentive category. These ordinances have to do with providing flexibility for developers, providing incentives for affordable housing and natural conservation, and establishing procedure, as well as clarifying definitions.

ZONING SITE DESIGN: PROCEDURAL/INCENTIVE	
ORDINANCE	REASONING
The Board may waive the initial improvement of up to 15% of the parking spaces required	Flexibility
The Town Board may allow up to a 25% increase in “dwelling units” for: (1) At least 15% affordable units, or (2) A significant amount of environmental conservation and/or preservation	Incentivize affordable units and environmental conservation
In the event of any inconsistencies between the standards contained in this § 113-57 and the provisions in the remainder of this chapter, the provisions of § 113-57 shall control.	Procedural
The Planning Board shall render a specific advisory opinion to the Town Board on all waiver and modification requests made by an applicant	Procedural

“Multifamily housing” projects may contain or be comprised of “two-family dwellings,” and the requirements pertaining to “multi-family housing” units shall apply	To classify two family dwellings as multi-family dwellings
The Town Board, in its sole discretion, may modify the width of the landscaped buffer requirements	Flexibility

The ordinances set forth in the site design portion of Pound Ridge’s zoning code when applied to the seven eligible vacant parcels under the site selection portion of Pound Ridge’s zoning code allow for a maximum number of 270 multi-family units. These 270 units would allow for between 27 and 39 affordable units, depending on the use of the affordable housing bonus.

Summary of Town Code

The zoning code is designed to accommodate multi-family housing while also protecting community character, protecting environmental resources, and remaining within the town’s infrastructural capacity. When looked at by intent, the 22 ordinances within Pound Ridge’s town code that deal with multi-family housing, 9 are associated with infrastructure, 6 are procedural/incentive, 6 are community character, and 1 is environmental. These restrictions and incentives allows for the development of a maximum of 270 multi-family housing units that would allow for between 27 and 39 affordable units across seven eligible sites under its special use permit. It is important to note that the maximum number of units that are allowed by a site’s gross lot area may be restricted by other site-specific constraints. Further other lots may be available for multi-family housing development by zoning variance.

Chapter 3: Ridge 29 Case Study

Ridge 29 is a proposed 43-unit multi-family housing development proposed for Pound Ridge. The project proposes to build a constructed wetland treatment system for the treatment of wastewater and to provide five affordable housing units. The proposal came up for special permit review by the town in the summer of 2014 and was reviewed by both the town board and the planning board. It was during this time that Pound Ridge amended its zoning code, which had previously allowed for multi-family senior housing to more broadly apply to all multi-family housing. The proposal, however, was ultimately rejected by the New York State Department of Environmental Conservation (DEC), which oversees the Croton Watershed system that provides drinking water to New York City. Their objection to the project was the constructed wetland wastewater treatment system, which has not been tried in Westchester County. To date Ridge 29 has yet to receive approval for construction. Town Supervisor Richard Lyman speaking on the matter of Ridge 29 said,

“I wrote the referral to the planning board and said that this is a very important project for the town because it had five units of affordable housing there was a lot of stuff and that they needed to look at this on the cursory to say yea they meet all the criteria set forth in the law so we really tried to push it. The DEC then stepped in and rejected their plan for their septic their water treatment, which was a cornerstone of their whole development. It was a constructed treatment wetland. And because it was going to be the first one done in Westchester County and it would be managed by a homeowner’s association, DEC rejected it.” (Interview with Richard Lyman, 3/24/16)

On a later occasion, he would clarify that aside from the homeowner’s association, the other sticking point for DEC was the drip dispersal method of the onsite wastewater treatment system, as opposed to conventional septic field absorption.

This section is meant to provide a case study, showing how the amendments to the Pound Ridge zoning code play out in practice. This will be done by looking at how the site conforms to community character, the environment, and Pound Ridge’s infrastructure, as well as, how the project was affected by procedure and incentive.

Community Character

The Ridge 29 proposal adheres to the mass and bulk requirements of the Pound Ridge multi-fam-

ily zoning ordinances. Maximum building coverage does not exceed 15 percent, 50 percent of the gross lot area is maintained as open space, building length does not exceed 100 feet, building height

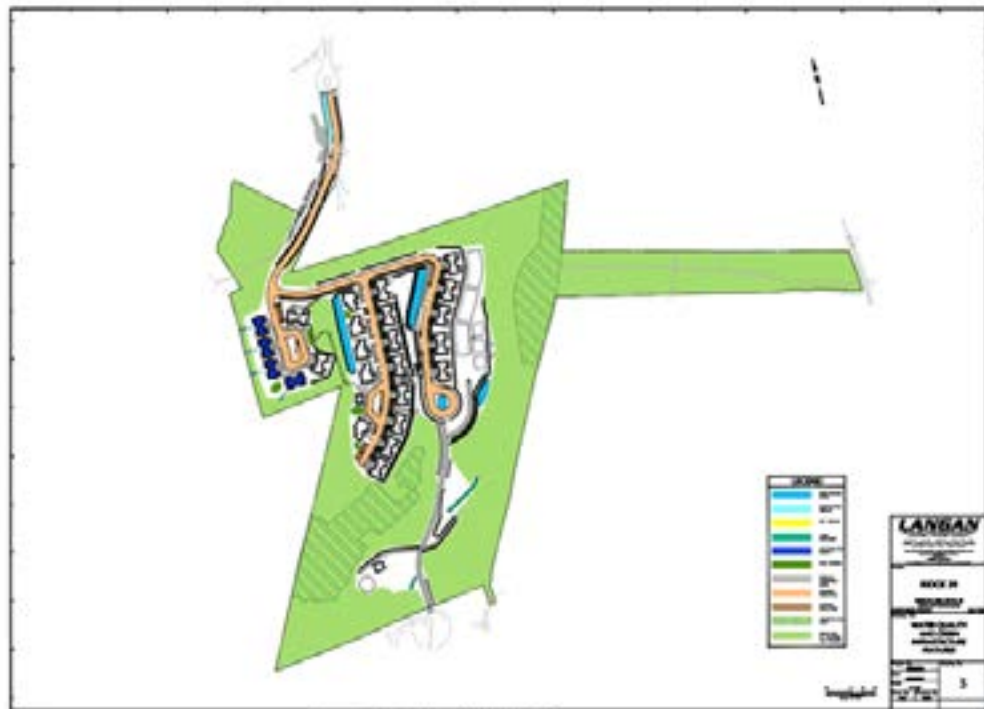


Figure 1: Ridge 29 Site Plan (Source: Langan Engineering)

The project proposes three styles of two-story buildings, called Downhill House, Uphill House, and Upper Terrace House. The aesthetics of the buildings' designs are meant to fit with Pound Ridge's rural aesthetic.



Figure 2: Downhill House (Source: Ridge 29, LLC)



Figure 3: Uphill House (Source: Ridge 29, LLC)



Figure 4: Upper Terrace House (Source: Ridge 29, LLC)

Environment

Environmentally, the Ridge 29 proposal meets the requirements that the aggregate of slopes in excess of 25 percent and the wetlands, watercourses and waterbodies constitute less than 45 percent of the lot area, as well as adhering to the formula set for calculating the maximum number of dwelling units. The lot that Ridge 29 is proposed to be on has an aggregate of 34 percent of its lot area consisting of slopes in excess of 25 percent and wetlands, watercourses and waterbodies. By factoring the 34 percent of the site that is, under the town code, unbuildable, and applying the formula set out by the town code, the maximum number of buildable units for the project is 70.

This 70 unit number is not achieved for several reasons. The first being that the maximum allowable number of units set for any multi-family development is 50. Further the site's environmental conditions, primarily its steep terrain, makes development difficult across much of the site. Environmental limitations coupled with other regulatory constraints limited the developer to proposing 43 units.

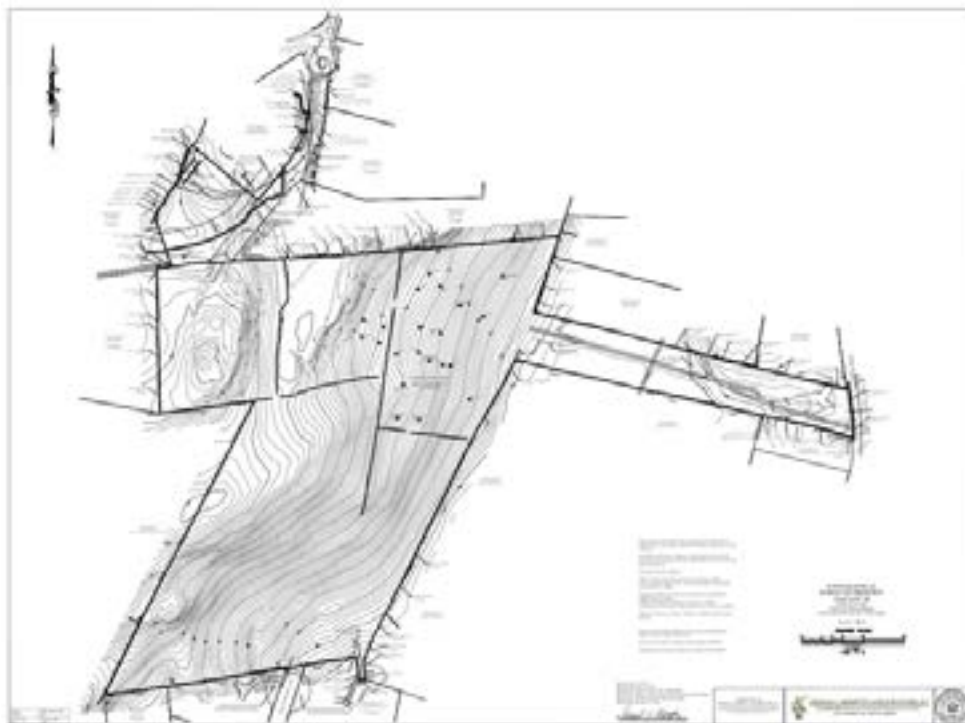


Figure 5: Ridge 29 Site Topography (Source: Ridge 29, LLC)

Infrastructure

The proposed Ridge 29 development adheres to all site selection provisions for multi-family housing specified in the town code, the 50 dwelling unit cap, the provision of access from a public road, provision of common indoor and outdoor facilities, and provision of parking spaces. Meeting these provisions resulted in less buildable space and added to the reduction in the total number of buildable units for the project. In terms of the costs of municipal services, the estimated revenue generated from the project was \$547,993 and the projected costs were \$439,650, generating a yearly positive net surplus of \$108,344 per year for the town. The biggest hurdle for the project, however, was in the provision of a communal or shared sewage disposal and water supply facilities and its oversight by a homeowners' association.

The developer employed Onsite Engineering to design an Onsite Wastewater Treatment System (OWTS). The OWTS was designed to support 2.7 people per household at 70 gallons per day per person for the planned 43 units, totaling 8,127 gallons per day (Onsite Engineering, 2015). The OWTS was designed as a three-part system, a Septic Tank Effluent Gravity (STEG) Collection System, a Constructed Treated Wetland (CTW) Treatment System, and a Drip Dispersal System. Each building, which contains two three bedroom units, is connected to a STEG Collection System. A STEG Collection System is composed of a "2,000 gallon 2 compartment septic tank equipped with a 1/16" effluent filter on the septic tank outlet baffle to trap solids" (Onsite Engineering, 2015). The STEG Collection System essentially separates liquids and solids, allowing liquids to pass through pipes to the Constructed Treated Wetland (CTW) Treatment System and trapping solids, which periodically will have to be removed. The CTW bio-filtrates the effluent, which is then dispersed throughout the site through a series of dispersal pipes. The maintenance and care of the OWTS was to be managed by an established homeowners' association.

As the project site is situated within a watershed adjacent to a stream that connects to a reservoir, the project was reviewed by New York State Department of Environmental Conservation (DEC). The OWTS was rejected by DEC on the grounds that it was to be managed by a homeowners' asso-



Current State of Ridge 29

Ridge 29 met the standards set out by the Pound Ridge zoning code and was in the midst of negotiating the final number of units when a cornerstone of the project, its Onsite Wastewater Treatment System, was rejected by the New York State Department of Environmental Conservation (DEC) for two reasons. The first reason was because the OWTS was to be managed by a homeowners' association, as specified by Pound Ridge's zoning code. DEC saw a homeowners' association as an unreliable manager of the OWTS and, therefore, the project put the quality of nearby reservoirs, which make up part of the New York City water supply, at risk. The second reason was the drip dispersal method of the onsite waste water treatment system that was being proposed. What this means for future proposals is unclear. As for the final fate of the Ridge 29 project, Town Supervisor Richard Lyman said, "I think the Ridge 29 project is dead" (Interview with Richard Lyman, 3/21/16).

Takeaways from Ridge 29

Ridge 29 has three main takeaways. The first is that the Pound Ridge zoning code can be restrictive to a developer trying to build multi-family housing units. The size of Ridge 29's lot, should allow for 70 units of multi-family housing, provided that multi-family housing is set at four times the density of single family housing. Due to a 50 unit cap and parking requirements the total number of units was reduced to 43. The second takeaway is that wastewater treatment is a major hurdle to be overcome for multi-family housing developers in Pound Ridge. The third takeaway is that what prevented construction of Ridge 29 had more to do with infrastructure and community character than it did with environmental constraints.

Chapter 4: Pound Ridge and the Goals of the Consent Decree

The third and final question of this thesis is, how do the changes made to the Pound Ridge zoning code meet the goals of the 2009 Consent Decree signed between HUD and Westchester County?

The changes to the Pound Ridge zoning code have expanded the potential for multi-family and affordable housing construction within the town. If developers were able to receive approval from the town and DEC for a potential project on the seven eligible vacant lots in Pound Ridge for multi-family construction there is potential to build 270 multi-family units with between 27 and 39 affordable units. The feasibility of building this many units, however, is unclear due to waste-water issues and limited financial return for projects.

Wastewater treatment has not been resolved in Pound Ridge, which is necessary for the construction of multi-family housing. The town lacks sewerage infrastructure and must support all development on well and septic systems. For a multi-family project this requires a wastewater treatment system with the capacity to support multiple units. This is a complex task that involves expertise and a significant financial investment on the part of the developer. The Ridge 29 development proposed an onsite waste water treatment system that could support 43 units, however, the system was rejected by DEC because of its sub-surface drip dispersal method, which varies from a traditional septic system, and because of the systems management by a homeowners' association. As a result, the project has not moved forward. A public management alternative to a homeowners' association has been explored by Pound Ridge, but the necessary funding for such an infrastructural investment has not been secured.

"I have brought to the County actually three different possible sites. And the issue comes down to there just is not enough bang for the buck...We have one site, right smack in the middle of Scott's Corner right now that is in foreclosure through a tax in rem proceeding we have. The County actually has first right of refusal, that's part of the consent order. They're not interested because through the cost of acquiring the site and the cost of the infrastructure to be able to handle wastewater there is no economic return. I brought another site to their attention that was in Scott's Corner that had ample size to do 10 units and would have the ample septic capacity. The whole thing. It was a very viable piece of property and the developer looked at it very hard and walked away because there was not enough economic return. And the third site was the same thing. They brought another developer in and he spent some time up there looking at it and walked. Because it came down to the same thing, the guy wanted to do 50, 60, 70 units and we could only do 8,6,10. It just doesn't pay." (Interview with Richard Lyman, 3/24/16)

The necessity of wastewater treatment investment, coupled with limits on the number of units that can be built on a site make development in Pound Ridge financially infeasible to some developers.

Pound Ridge's zoning code governs the number of units directly in two ordinances.

- *"The maximum number of 'dwelling units' shall be determined by dividing the gross 'lot area' (excluding slopes in excess of 25% and wetlands, watercourses and water bodies, as defined in the Town of Pound Ridge Freshwater Wetlands Law) by the minimum 'lot area' required for 'one-family dwellings' in the zoning 'district' in which it is located, multiplying that result by four and rounding down to the nearest whole number. The density may be further restricted in consideration of the following factors:
(1) The environmental suitability of the property.
(2) Access to the property.
(3) Shape of the property.
(4) Potential impact upon the surrounding neighborhood and land 'uses.'"*
- *"There shall be no more than 50 'dwelling units' permitted in any 'multifamily housing' development."*

Together these ordinances establish that multi-family developments are allowed to be constructed at four times the density of single family development, unless the number of units exceed 50. The number of units on any size site is capped at 50 units. These ordinances were put in place to preserve community character and maintain the infrastructural capacity of town roads.

There are several site design elements that place restrictions on the number of units that can be built on a site.

- *Maximum "building coverage" limitations, as applied to the gross "lot area" of the "multifamily housing" site as per Subsection D above, shall be as follows:
Maximum "building coverage"
R-3A: 5%
R-2A: 7.5%
R-1A: 15%*
- *The "multifamily housing" plan shall maintain a minimum of 50% of the gross "lot area" as open space. For the purposes of this section, "open space" shall include all land and water areas on the site which are not covered by "buildings," "structures," roadways, other impervious surfaces, and semi-impervious surfaces such as gravel and porous paving. A suitably landscaped buffer area of a size to be determined to be adequate by the Planning Board based upon considerations of topography, adjoining land "use" and site design, but generally not less than 100 feet in width, shall be provided along all property boundaries. Such landscaped buffer area may contribute to the satisfaction of the fifty-percent open space requirement.*
- *All "dwelling units" shall be permitted a maximum "height" of 2 1/2 stories or 35 feet, whichever is less.*
- *The average area of all "multifamily" "dwelling units," excluding "garage" space and any enclosable porch, shall not exceed 2,500 square feet of habitable floor area, and no individual "dwelling unit" shall contain in excess of 3,000 square feet.*
- *There shall be provided a minimum of not less than 2.0 "parking spaces" for each "dwelling unit"; plus for each "dwelling unit" having bedrooms in excess of two there shall be an additional 0.5 "parking space" for each bedroom, plus 0.5 outdoor, unreserved "parking space" available for visitor "use" for each "dwelling unit."*

These ordinances, with exception of the parking requirement which is an infrastructural concern, are community character concerns. They are meant to strike a balance between increased density and the town's rural character.

These restrictions on the number of units do reduce the financial return for developers. The Ridge 29 proposal was on a lot that at four times the single family density would be able to support 70 multi-family units. Due to the 50 unit cap and site design restrictions the development proposed 43 units. This is not to say that these ordinances are not serving a valid purpose, however, it may be possible that a relaxation of community character zoning ordinances and a study into expanding the 50 unit cap may result in an increased incentive for developers to build multi-family housing in Pound Ridge that remains within the town's capacity to support.

With limits on the number of units and wastewater limitations, the Pound Ridge zoning changes have not resulted in multi-family or affordable housing development. This raises the question, is this the fault of the zoning code or is this a simple matter financial infeasibility? After all zoning is not a guarantee for development. This answer to this question has some basis in zoning and some basis in financial feasibility. In terms of financial feasibility, it must be recognized that Pound Ridge does have real limitations. It is an environmentally sensitive area, it is lacking in wastewater capacity, and it is not near public transit. On the other hand, developers have expressed interest in building multi-family housing in Pound Ridge. Developers have built multi-family housing in neighboring Lewisboro and North Salem. It must also be acknowledged that the zoning ordinances adopted by the town were traditional and could be seen in many other towns looking to adopt a multi-family ordinance. The changes do not seem to address the limitations of the unique environmental conditions and infrastructural constraints of the town in a way that moves beyond traditional practices.

The 2009 Consent Decree is composed of two broad implementation tools, the provision to build 750 affordable housing units and the adoption of an implementation plan by the County to overcome barriers to fair housing, which are meant to support the larger goal of affirmatively furthering fair housing. Affirmatively furthering fair housing allows for the broad and equitable distribution of

Consent Decree: Implementation Tools & Goal		
Implementation Tools		
750 Units		Implementation Plan
1) Secure land and development deals for 750 units 2) \$51.6 million fund for “land acquisition, infrastructure, improvement, construction, acquisition...” 3) Development to occur in specified locations		1) Creation of implementation plan 2) Timetables, benchmarks, identifying barriers to AFFH and proposed actions to overcome barriers 3) Assess local regulations, in particular zoning codes
Goal		
Affirmatively Further Fair Housing		
AFFH allows for the broad and equitable distribution of affordable housing which promotes sustainable and integrated residential patterns, increases fair and equal access to economic, educational, and other opportunities, and advances the health and welfare of residents.		

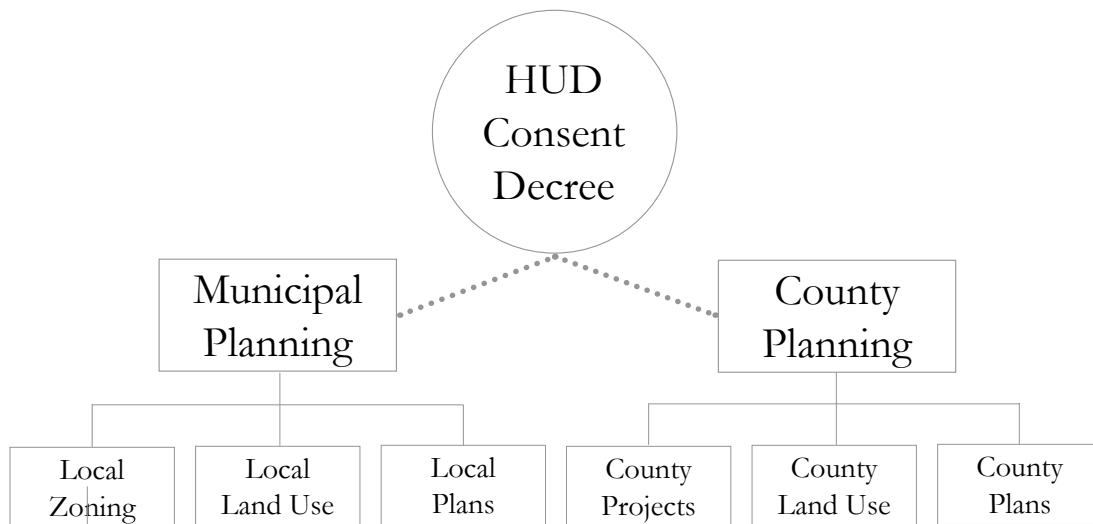
affordable housing which promotes sustainable and integrated residential patterns, increases fair and equal access to economic, educational, and other opportunities, and advances the health and welfare of residents.

The 2009 Consent Decree is composed of two broad implementation tools, the provision to build 750 affordable housing units and the adoption of an implementation plan by the County to overcome barriers to fair housing, which are meant to support the larger goal of affirmatively furthering fair housing. Affirmatively furthering fair housing allows for the broad and equitable distribution of affordable housing which promotes sustainable and integrated residential patterns, increases fair and equal access to economic, educational, and other opportunities, and advances the health and welfare of residents. The question for this section is how the changes made to the Pound Ridge zoning code meet these goals.

This is a multi-faceted question that cannot be answered with a simple yes or no, but requires some qualification and a conclusion that exists on a sliding scale. The Pound Ridge zoning code meets the goals of the Consent Decree to some extent by expanding the potential for multi-family housing in Pound Ridge. This expansion of capacity, however, has not resulted in a viable project despite developer interest. On a sliding scale more weight must be given to the actual development of multi-family affordable housing, therefore, this thesis qualifies that the changes made in Pound Ridge do not meet the goals of the 2009 Consent Decree, despite Pound Ridge being removed from the Berenson list in May 2015 by the Federal Housing Monitor.

Chapter 5: Thinking Regionally

At the intersection of Pound Ridge's zoning changes and Westchester County's dispute with HUD is the scale and consistency of decision making at local, county, state, and federal levels. New York is a home rule state when it comes to planning, which means that localities have discretion over their land use decisions with a limited role for county and state officials. This home rule is not without its limitations, as seen in the Berenson and Huntington court cases. Localities must consider regional housing need in their local land use decisions, although outside of legal action there is no method for enforcing this. This is where the 2009 Consent Decree tries to establish a previously unestablished connection, legally obligating the County to act in the role of enforcing localities obligation to plan for regional housing need.



As it stood before the 2009 Consent Decree, municipalities were told to think regionally, but with no incentives or resources to do so. In theory, by establishing vertical consistency between county and town planning goals, Westchester County would be able to evaluate regional need, assign responsibility, and provide resources to localities for meeting this regional need. In many ways the Consent Decree was furthering the principles established in Berenson and Huntington.

The County, however, has been reluctant to take up this role under the leadership of County Executive Robert Astorino. Despite being legally obligated to pursue municipalities with barriers to AFFH,

the County has returned to court several times since 2009 for negligence in the preparation of its assessments of municipal barriers to AFFH and has fought against the Consent Decree's validity. Westchester County to date has yet to accept the Federal Housing Monitor's report that found Pound Ridge's zoning code prior to its revisions as a barrier to AFFH. As such, the County has not evaluated the role that Pound Ridge, or any other municipality, has to play in meeting regional housing needs. Instead the County maintains that people can live anywhere in Westchester as long as they can afford it without ever linking affordability and exclusion.

Resistance by the County to the Consent Decree is one of the biggest obstacles for the development of fair housing in Pound Ridge. This is for two broad reasons. The first reason is that the County does not provide the financial support to invest in infrastructure and land acquisition to encourage fair housing development in Pound Ridge, despite having a \$51 million dollar fund to do so across the County as part of the Consent Decree. The second reason is that there is no guidance or regional perspective for developing fair housing. As a result, fair housing proposals in Pound Ridge are isolated and the reasoning for them remains compliance with the Housing Monitor, rather than being an investment in a constellation of fair housing projects that work to increase affordability and diversity throughout Westchester. Without regional support, it is likely that fair housing development in Pound Ridge will remain an abstract and isolated endeavor with limited potential.

Conclusions & Recommendations

This thesis started out with the task of answering three questions: What are the implicit goals of Pound Ridge's amended multi-family zoning code? What is Pound Ridge's capacity, under its amended zoning code, to support multi-family and affordable housing? How do the changes made to the Pound Ridge zoning code meet the goals of the 2009 Consent Decree signed between HUD and Westchester County? During the course of answering these questions, new questions emerged about the role of regional planning in the context of New York State's home rule planning environment.

In response to the first question, what are the implicit goals of Pound Ridge's amended multi-family zoning code?, this thesis concludes that the implicit goals in the new zoning amendments were compliance with the Federal Housing Monitor's request to allow for a broader array of multi-family housing units as long as any development met the town's infrastructural capacity, considered environmental restraints, and maintained community character. After reviewing the twenty-two ordinances that govern Pound Ridge's multi-family housing development, it was found that nine were for infrastructural reasons, six were for community character, six were procedural/incentive, and one was environmental.

In response to the second question, what is Pound Ridge's capacity, under its amended zoning code, to support multi-family and affordable housing?, there are two answers. The first answer is what the code allows for at full build out, which is 270 multi-family units, of which between 27 and 39 would be affordable. The second answer to this is what the code has allowed for in practice, which up until now has been none. The reason for this has to do with wastewater treatment and financial feasibility.

In response to the third question, how do the changes made to the Pound Ridge zoning code meet the goals of the 2009 Consent Decree signed between HUD and Westchester County?, it must be concluded that the changes made, although they are a step forward, do not meet the goals of the 2009 Consent Decree. The 2009 Consent Decree had the goal of affirmatively furthering fair housing that allows for the broad and equitable distribution of affordable housing which promotes sus-

tainable and integrated residential patterns, increases fair and equal access to economic, educational, and other opportunities, and advances the health and welfare of residents. The Pound Ridge zoning changes have not resulted in the construction of any fair housing and appears unlikely to produce any in the near future, despite there being developer interest. For this reason, it must be concluded that Pound Ridge's zoning changes, since they do not support the development of multi-family or affordable housing, has not met the goals of the 2009 Consent Decree.

This raises the question, if these changes do not meet the goals of the 2009 Consent Decree, are there other changes that can be made that will meet the goals of the 2009 Consent Decree? The answer this thesis draws is that it is possible to meet the goals of the 2009 Consent Decree through regional cooperation between Westchester County and Pound Ridge. The 2009 Consent Decree was based upon the notion that the County would serve as the enforcement arm of a regional housing plan that sought to increase affordability and diversity within Westchester's municipalities. The implementation of the Consent Decree has suffered because Westchester County, which was legally obligated to serve as the enforcement arm of the plan, has rejected the validity of the Consent Decree's encroachment on New York State home rule planning practices under County Executive Robert Astorino. Due to the stance taken by the County, Pound Ridge, as well as other municipalities, have been seeking to comply with the requests of the Federal Housing Monitor without a clear plan or guide for how much fair housing should be built or why it should be built. Rather than creating a constellation of fair housing developments that would work to mutually reinforce affordable and diverse communities throughout Westchester, the Consent Decree has resulted in piecemeal developments that meet the bare minimum standards set by the Federal Housing Monitor and lack any type of overall consistency or plan. Without a meaningful and directed regional plan for housing in Westchester, it is likely that fair housing in Pound Ridge will remain abstract and isolated from any broader goals to increase affordability and diversity.

The Housing Monitor removed Pound Ridge for the town's efforts, which have been commendable, but the prospects of multi-family and affordable housing in Pound Ridge remain limited and the

chances of them being part of a meaningful regional solution to housing is remote. For the goals of the Consent Decree to be achieved in Pound Ridge there must be a continued effort that builds off of the changes already made that include both town and county officials. Until then, Westchester is still racially and economically segregated. It is still expensive and housing options limited. Fireman, policemen, nurses, and emergency service providers are still expected to commute to their jobs in the County. The County's poor and minority communities are still clustered in a handful of census tracts. Without a continued concerted and meaningful effort to change the status quo, planners and politicians are not meeting the needs of New York area residents. To continue the work of affirmatively furthering fair housing in Westchester this report offers the following recommendations.

1. Westchester County should take an active role in supporting municipal efforts to Affirmatively Further Fair Housing.

Overcoming obstacles to AFFH in Pound Ridge's can be advanced with support and guidance from Westchester County, such as opening up a dialogue with DEC, providing funding for infrastructural investments and land acquisition, and providing a housing needs assessment. Westchester County, however, is resistant to the very notion of the Consent Decree or any type of non-local involvement in land use decisions. As it currently stands, County Executive Robert Astorino is ideologically opposed to any type of regional planning efforts and does not acknowledge economic and racial clustering in Westchester County as a problem.

If this ideological divide could be bridged, the County could provide valuable support and guidance to municipalities to ensure a constellation of fair housing developments that are guided by a single plan to increase affordability and diversity in Westchester County. Such a plan could include a fair share housing analysis for Westchester County. This analysis would be a start to establishing what Pound Ridge's role in AFFH in Westchester County is, allowing for Pound Ridge and other municipalities to set goals and apply for County funding in an informed manner.

2. Increase flexibility for multi-family housing development in the Pound Ridge town code.

The Pound Ridge town code should be explored in further detail to determine where flexibility can be increased and thereby further incentivize multi-family housing development.

The first element of the zoning code that should be re-examined is the potential to change the status of multi-family housing from a special use permit development to an as-of-right development. Further, existing zoning provisions have the potential to be relaxed, particularly those that govern community character. These govern the mass and bulk of buildings and provide for space between buildings. Rather than restricting development because of the fear of lost community character, an increase in density could be balanced by creative design solutions. Pound Ridge has already held one design charrette with WXY Architects and further design solutions should be embraced.

Zoning ordinances governing infrastructure, of which there are nine, should be given a hard look to evaluate where there is potential to ease requirements in the zoning code. Based on a review of the infrastructural requirements of the zoning code there are several requirements that lack a firm reasoning for why they are set. One of these is minimum lot size. The minimum lot size is necessary to accommodate waste-water treatment, but it is unclear if the requirement of 20 and 30 acre minimums are the right number.

This review of the Pound Ridge zoning code for areas of increased flexibility can build off of the qualitative zoning intent analysis performed in this thesis. Starting with an analysis of intent a more refined analysis can be performed to determine where opportunities for increased flexibility may exist.

3. Explore alternatives to wastewater treatment management and funding.

The Pound Ridge zoning ordinance that specifies that wastewater treatment systems must be managed by a homeowners' association has created complications for multi-family housing

development. Alternative management structures, such as a private building manager, should be explored. The feasibility of such an idea would lie in the reliability of and DEC's receptivity to a private manager. Pound Ridge should also explore what funding opportunities exist at the state and federal level to invest in a wastewater treatment facility for the town's commercial area. This would allow for the town to oversee the operation of the treatment system and overcome the limitations of operation by a homeowners' association.

4. Further study into the criteria for the \$51 million dollar fund that Westchester established as a provision of the 2009 Consent Decree.

As part of the 2009 Consent Decree, Westchester was required to establish a \$51 million dollar fund for the purposes of acquiring land and investing in infrastructure to affirmatively further fair housing. It is unclear what the criteria are the dispersal of funds. It would provide valuable insight for municipalities applying for county funding and interested parties to learn what criteria the County sets for releasing these funds. A future study could look at the dispersal of funds and their effects on the creation and distribution of fair housing in Westchester.

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Image Sources

Figure 1, Langan Engineering

Figure 2, Ridge 29, LLC

Figure 3, Ridge 29, LLC

Figure 4, Ridge 29, LLC

Figure 5, Onsite Engineering, PLCC

Appendix A: Detailed Zoning Intent Analysis

Zoning: Site Selection

The Town of Pound Ridge has enacted four ordinances that regulate the lots where multi-family housing can be constructed. These regulations are intended to accommodate wastewater treatment, enable fire truck access, encourage development in Pound Ridge's main commercial area, protect water resources, and ensure structural stability.

1 "The 'multifamily housing' site shall have an area of not less than 20 acres in the R-1A and R-2A 'Districts' and not less than 30 acres in the R-3A 'Districts'"

Intent: Infrastructure

The minimum lot size is set to accommodate multi-family housing development and their waste-water treatment facilities. Pound Ridge lacks sewer and waste water treatment infrastructure and as a result must rely on on-site treatment of wastewater. This reliance on on-site waste-water treatment, necessitates drip fields to filter and disperse effluent. The 20 and 30 acre minimum lot size is meant to accommodate the drip fields that a multi-family development's on-site waste water treatment system requires.

"It had previously existed under our special permit provisions on properties of more than 20 acres...we have no infrastructure here. Zero. We have no municipal water. We have no sewer systems of any type. Everything is private well and septic system. And we don't even have a traffic light. But the primary driver, I don't want to get too off topic, the complete lack of infrastructure means multi-family housing is not going to be typically on a basic septic system. It's going to have to be on some sort of large scale water treatment system. You're talking 20-30 units, whether it's all affordable or not, it makes no difference." (Interview with Richard Lyman, 1/16/16)

The origin of the 20-acre and 30-acre lot sizes is unclear. It had existed under the previous senior housing provision and was deemed necessary. Richard Lyman speaking on this subject said,

"In some respects it is an arbitrary number because there are sites that may be under 20 acres that could be suitable to handle that, but for the most part, if you know the topography of Pound Ridge at all, most of the site's that we have are very rocky, very wet, and fragmented in how they would accommodate a development of that size. So is there a magic number there of 20 acres or 30 acres? No. There just happens to be the way it works out." (Interview with Richard Lyman, 1/16/16)

Pound Ridge has 305 lots that have a land use classification of Vacant/Undeveloped Land. Out of these 305 Vacant/Undeveloped Lots, nine meet the minimum lot size requirement set by the town's zoning ordinance.

2 "...the lot shall have road frontage not more than 1/4 mile in travel distance from at least one of the Town's major roads (that is, Westchester Avenue, High Ridge Road, Salem Road, Stone Hill Road, Pound Ridge Road and Long Ridge Road)."

Intent: Infrastructure

Multi-family development sites are required to be within a quarter mile from one of the town's major roads. This provision is meant to accommodate fire truck access. Pound Ridge's secondary roads are characteristically narrow and steep, making access difficult for larger vehicles. Pound Ridge's Town Supervisor, Richard Lyman, speaking on the subject of this provision stated,

“Our special use permit does require some things that does raise some eyebrows initially. And one had to do with the proximity of the property to a major road. And that’s primarily because of access to what would be a larger development. Larger buildings, let’s put it that way, for firefighting and emergency purposes... Losing a single family house because it’s hard to get to is a tragedy. Losing a twenty-unit condo because you can’t get to it is disastrous. And there was some really hard thinking that went into that.” (Interview with Richard Lyman, 1/16/16)

Of Pound Ridge’s 305 Vacant/Undeveloped lots, 123 are within the quarter mile buffer of Westchester Avenue, High Ridge Road, Salem Road, Stone Hill Road, Pound Ridge Road, or Long Ridge Road.

3 *“Notwithstanding the above, for lots which have road frontage within 1/4 mile in travel distance from the intersection of Westchester Avenue and Trinity Pass Road, the ‘multifamily housing’ site shall have an area of not less than the minimum ‘lot area’ required for ‘one-family dwellings’ in the zoning ‘district’ in which the site is located.”*

Intent: Infrastructure

The intersection of Westchester Ave and Trinity Pass Road is a marker for the Scott’s Corner area of Pound Ridge. Scott’s Corner is the main commercial area of Pound Ridge with several restaurants, small shops, a gas station, and a grocery store. The Scott’s Corner area, like the rest of Pound Ridge, is serviced by wells and septic tanks. This creates a problem for restaurants that use water intensively for food preparation, dishwashing, and other cleaning. The limitations of a well and septic system has led to some local restaurants serving their meals on paper plates in order to reduce their wastewater. This is a situation that the town is interested in ending.

“Two of the four eateries...are on paper products. Paper plates. Lined baskets with a liner in them. Not dishware because they don’t have the capacity to wash dishes.” (Interview with Richard Lyman, 1/16/16)

A multi-family housing development could potentially serve as a catalyst for a wastewater treatment system that could serve the new development and the existing businesses in Scott’s Corner. As such, the town sees it in their interests to reduce the lot size requirement for the Pound Ridge area.

“...the thing we are struggling still with trying to come up with a centralized solution to that area. Because it’s long been plagued with wastewater issues. So we thought that we would be able to solve the issues with the commercial district and at the same time increase our housing.” (Interview with Richard Lyman, 1/16/16)

The quarter mile buffer around the intersection of Westchester Avenue and Trinity Pass Road contains two vacant lots, both of which meet the minimum lot area for a single family house in their respective zoning districts. One lot is located fully in the R-1A zoning district and one lot is located partially in the R-1A district and R-2A District.

4 *“The aggregate of the slopes in excess of 25% and the wetlands, watercourses and water bodies, as defined in the Town of Pound Ridge Freshwater Wetlands Law shall constitute less than 45% of the gross ‘lot area’ of the ‘multifamily housing’ site.”*

Intent: Environmental

This provision was enacted with the intent of protecting water resources and to prevent development on steep terrains, which are not suited for development. Pound Ridge has reservoirs that feed into the New York City water supply as well as the Stamford, CT water supply. Wetlands are a common feature throughout the town. Many streams and creeks feed directly into reservoirs, and as such, require careful management of water quality. Of Pound Ridge’s 305

vacant lots, 262 meet this criteria.

Summary of Site Selection

These four ordinances place restrictions on the eligibility of a lot for multi-family housing development. The first ordinance regulates the size of multi-family lots in order to accommodate on-site waste-water treatment facilities. The second ordinance regulates the distance a lot can be from a major road in order to allow for fire truck access. The third ordinance allows for smaller lots within the Scott's Corner area in order to encourage development within the town's main commercial district. The fourth ordinance regulates the area of a site that can be composed of water bodies, wetlands, and steep slopes in order to protect water resources and prevent development that may not be structurally sound. After considering these regulations seven lots were found to be suitable for multi-family housing development. After speaking with the Town Supervisor Richard Lyman about these findings, he indicated that there are likely other sites that may be available for multi-family housing development with a zoning variance.

Zoning: Site Design

Once a lot is selected as a development site, there are up to eighteen ordinances that affect how that lot can be developed. These ordinances are meant to maintain community character, protect environmental resources, and ensure that the development is in compliance with the town's infrastructural capacity.

1 "The maximum number of 'dwelling units' shall be determined by dividing the gross 'lot area' (excluding slopes in excess of 25% and wetlands, watercourses and water bodies, as defined in the Town of Pound Ridge Freshwater Wetlands Law) by the minimum 'lot area' required for 'one-family dwellings' in the zoning 'district' in which it is located, multiplying that result by four and rounding down to the nearest whole number. The density may be further restricted in consideration of the following factors:

- (1) The environmental suitability of the property.*
- (2) Access to the property.*
- (3) Shape of the property.*
- (4) Potential impact upon the surrounding neighborhood and land 'uses.'"*

Intent: Community Character

The intention of this ordinance is to determine how many units would be suitable for a particular lot. The provision seeks to set a multi-family housing density at a rate of four times that of single family housing. In order to achieve this, the gross lot area is divided by the minimum lot area required for one family dwellings. This gives the density that would be achieved by single family houses. This number is then multiplied by four to set the density at four times that of single family development. The gross lot area does not include slopes in excess of 25% and wetlands, watercourses, and water bodies.

$$\# \text{ of Units} = ((A-B)/C)*4$$

A= Lot Area

B= Area of lot taken up by slopes in excess of 25% and water bodies, watercourses, and wetlands

C= Minimum lot area for zoning district

The reasoning behind the density of multi-family housing being set at four times that of a single family housing was that four times was the number that the Planning Board arrived at in order to not overbuild the site and maintain community character. For the seven lots that meet the criteria set forth in the zoning lot selection, this formula for determining the minimum number of units results in 320 possible units.

2 “There shall be no more than 50 ‘dwelling units’ permitted in any ‘multifamily housing’ development.”

Intent: Infrastructure

The fifty dwelling unit cap was set so as to not exhaust municipal infrastructure, in particular town road capacity and traffic concerns.

3 Maximum “building coverage” limitations, as applied to the gross “lot area” of the “multifamily housing” site as per Subsection D above, shall be as follows:

Maximum “building coverage”

R-3A: 5%

R-2A: 7.5%

R-1A: 15%

Intent: Community Character

The intention behind this ordinance is to prevent overbuilding a site, so as to maintain community character.

4 The “multifamily housing” plan shall maintain a minimum of 50% of the gross “lot area” as open space. For the purposes of this section, “open space” shall include all land and water areas on the site which are not covered by “buildings,” “structures,” roadways, other impervious surfaces, and semi-impervious surfaces such as gravel and porous paving. A suitably landscaped buffer area of a size to be determined to be adequate by the Planning Board based upon considerations of topography, adjoining land “use” and site design, but generally not less than 100 feet in width, shall be provided along all property boundaries. Such landscaped buffer area may contribute to the satisfaction of the fifty-percent open space requirement.

Intent: Community Character

This ordinance is meant to maintain good separation between lots in order to maintain community character.

5 “Multifamily” “dwelling units” may be located in attached or detached “structures”; provided, however, that there shall be no more than four “dwelling units” in any one dwelling “building” and the maximum building length shall not exceed 100 feet.

Intent: Community Character

This ordinance is meant to control mass and scale to maintain community character.

6 All “dwelling units” shall be permitted a maximum “height” of 2 1/2 stories or 35 feet, whichever is less.

Intent: Community Character

Similar to previous ordinance, this ordinance is a regulation on mass and scale to maintain community character.

7 The average area of all “multifamily” “dwelling units,” excluding “garage” space and any enclosable porch, shall

not exceed 2,500 square feet of habitable floor area, and no individual "dwelling unit" shall contain in excess of 3,000 square feet.

Intent: Community Character

This is another regulation on the size and scale of a development, however, the reasoning behind this regulation differs slightly from the previous two. The size of the units are regulated to maintain a certain income criteria in order to provide affordable units.

8 The site shall have direct access from a public road.

Intent: Infrastructure

The site should either already have direct access to a road or the developer must make provisions to connect to a public road. This is an infrastructural regulation.

9 Common indoor and outdoor recreational facilities may be provided on site in lieu of recreation fees. Such facilities shall be as determined adequate by the Planning Board. All recreation areas shall be appropriately landscaped and shall include a combination of small, internal, private "yard" and court areas for a variety of passive activities. Safety shall be emphasized in the design and particular attention given to pedestrian "use." Vehicular circulation drives shall be separated from pedestrian walks. Abrupt changes in grade shall be avoided and all changes in grade in the walk system shall be accomplished by both ramps and stairs. Such facilities, where needed, shall be built in ANSI specifications.

Intent: Infrastructure

The intention behind this provision is to allow developer flexibility in providing recreational space while maintaining infrastructural capacity. Currently, new developments must pay the town a \$12,000 fee that goes into a fund that supports the increased demand for recreational facilities. This ordinance allows a developer to provide on-site recreational facilities in lieu of paying the recreation fee. This is intended to maintain adequate recreational facilities for the town.

10 There shall be provided a minimum of not less than 2.0 "parking spaces" for each "dwelling unit"; plus for each "dwelling unit" having bedrooms in excess of two there shall be an additional 0.5 "parking space" for each bedroom, plus 0.5 outdoor, unreserved "parking space" available for visitor "use" for each "dwelling unit."

Intent: Infrastructure

The intention of this ordinance is infrastructural. It is meant to provide adequate parking spaces for residents and visitors. The 2.0 number came from the notion that many households in Pound Ridge have two cars. The provision of parking spaces can limit the amount of buildable area on a site.

11 Notwithstanding Subsection M(1) above, where the Town Board determines that less than the required number of parking spaces will satisfy the intent of this § 113-57, the Board may waive the initial improvement of up to 15% of the parking spaces required pursuant to Subsection M(1). In all cases it shall be expressly demonstrated on the site plan that sufficient space remains for the provision of the total amount of off-street parking required and the site plan shall bear such designation. All such undeveloped parking space shall be used and maintained as additional landscaped grounds until required for parking. Written guaranties, satisfactory to the Town Attorney, shall be submitted by the applicant for the potential eventual improvement of any such spaces which may have been waived, and these spaces must be constructed by the property owner within six months of the date of written notice to the property owner by the Town Board that such spaces have been determined as necessary and must be constructed. In addition, the Planning Board shall have the authority to require, as a condition of approval on a project by project basis, a specific

mechanism by which to ensure that the waived parking spaces, if required by the Town Board, will be built. The applicant may alternatively apply to the Town Board for approval to construct said waived spaces.

Intent: Procedural/Incentive

This ordinance allows for a release valve on the parking requirement. This allows for a project that will create less parking demand, provide less space and have more buildable area or open space.

12 “Multifamily” “dwelling units” shall not be serviced by individual wells and septic systems, but rather by communal or shared sewage disposal and water supply facilities.

Intent: Infrastructure

The intention of this ordinance is infrastructural. It is meant to provide adequate wastewater treatment for multi-family housing. Multi-family dwelling units, due to the amount of wastewater being discharged, requires a larger waste water treatment system than an individual well and septic system. The units must either be on a sewer system or a collective waste water management system. This impacts how developers approach multi-family development in Pound Ridge. As there is no sewer, an Onsite Waste Water Treatment System must be employed. This is a task that involves engineering and site specific surveys. For some developers this may prove overwhelming. Speaking on this matter, Town Supervisor Richard Lyman said,

“Right near Scotts Corner there is a 28-acre private piece. I took, the owner died and I took the maps myself and had a meeting with the chief of staff and the County Executive, the Department of Health, Westchester County Planning Department and we all sat around the table and I said there’s a 28-acre piece that fits all the criteria. And they brought a developer in to look at it and he walked away because his business was essentially buying and rehabbing apartment buildings and stuff where there’s municipal water and sewer. He had no clue how to deal with creating a separate water system just for that property to feed whatever’s built and a septic system big enough to treat it. He was like a fish out of water and it died. Never heard another thing about it. And it just points out, I think again, this guy had pretty deep pockets, when push comes to shove the cost of development exceeds the opportunity for a profit.” (Interview with Richard Lyman, 1/16/16).

13 A homeowners’ association shall be formed for purposes of owning, operating and maintaining all common land areas and all common facilities on the site. All “dwelling unit” owners must be members of the association and shall share in all costs incurred by the association on an equitable basis. The applicant shall execute and file with the Town such documents as, in the opinion of the Town Attorney, will be sufficient to create a property owners’ association responsible for the continued ownership, “use” and maintenance of all common land areas and facilities in accordance with the following requirements and any other conditions and limitations deemed appropriate by the Town to assure that the interests of the Town and of the future property owners will be adequately protected. In addition to all other purposes, the association shall establish necessary rules and regulations from time to time which shall be consistent with the purposes of this chapter and govern the “use” of “premises” authorized hereunder.

Intent: Infrastructure

The intention behind this ordinance is infrastructural. It is meant to establish a body that will care for the open space and common facilities within the development. This provision has caused some problems with the proposed Ridge 29 development, which had its on-site waste water treatment system denied by New York State DEC because it was to be overseen by a homeowners’ association.

14 “Multifamily housing” projects may contain or be comprised of “two-family dwellings,” and the requirements pertaining to “multifamily housing” units and development herein shall apply thereto.

Intent: Procedural/Incentive

This provision is meant to include two family dwelling units under the multi-family housing provisions and not under the single family housing provisions.

15 The Town Board, in its sole discretion, may modify the width of the landscaped buffer requirements of § 113-57G herein up to a maximum of 50%, upon demonstration by the special permit applicant that:

- (1)The benefit to the Town of granting such a modification outweighs any potential detriment; and*
- (2)Compliance with the requirement is not requisite to the health, safety and general welfare of the public.*

Intent: Procedural/Incentive

The intention of this ordinance is to allow for flexibility for the landscaped buffer requirement.

“...it was decided that there would be certain parcels, I can think of one in particular, and if you sited the project closer to one property line than the other. So you can create a 150 ft. separation on one side and only 50 on another you would have less impact because you are moving it away from an area that already has development to an area where there would never be any development. So the idea was to provide a flexibility in order to do that.” (Interview with Richard Lyman, 3/21/16)

16 So long as the total number of “dwelling units” in the project does not exceed 50, the Town Board may allow up to a 25% increase in the maximum number of “dwelling units” as determined in Subsection D above for such special benefits as the provision of:

- (1)At least 15% (rather than a minimum of 10%) of the “dwelling units” in the “multifamily housing” project as “affordable fair housing dwelling units” in accordance with § 113-100 of this chapter; and/or*
- (2)A significant amount of environmental conservation and/or preservation which goes above and beyond that otherwise required for the approval of the special permit.*

Intent: Procedural/Incentive

The intention of this ordinance is to act as an incentive for developers to provide more than the minimum 10 percent of affordable dwelling units and/or to preserve more open space.

17 The Planning Board shall render a specific advisory opinion to the Town Board on all waiver and modification requests made by an applicant in accordance with §§ 113-57M(2) and 113-57Q herein.

Intent: Procedural/Incentive

A standard release valve ordinance that allows for the developer to apply to the town for special waivers or modifications on site development.

18 In the event of any inconsistencies between the standards contained in this § 113-57 and the provisions in the remainder of this chapter, the provisions of § 113-57 shall control.

Intent: Procedural/Incentive

This ordinance establishes the supremacy of this section of the zoning code over other sections that may be inconsistent with this section.

Summary of Site Design

The ordinances set forth in the site design portion of Pound Ridge’s zoning code allow for a maxi-

mum number of 270 multi-family units. These 270 units would allow for between 27 and 39 affordable units, depending on the use of the affordable housing bonus.

Appendix B: Zoning Analysis Table

Building Lot	Site 1	Site 2	Site 3	Site 4	Site 5	Site 6	Site 7	Total
Gross Lot Area (Sq ft)	1,205,620	2,784,882	1,615,280	3,010,553	945,483	218,285	976,365	10,756,469
Unbuildable Area (Sq ft)	409,702	873,845	479,856	568,006	16,488	81,679	67,235	2,496,811
Unbuildable Area Percentage	34	31	30	19	2	37	7	-
Minimum Lot Requirement (Sq ft)	43,560	130,680	130,680	130,680	87,120	43,560	87,120	-
Max # of Buildable Units	70	60	30	70	40	10	40	320
Max # of Buildable Units Cap (50)	50	50	30	50	40	10	40	270
Building Coverage (Sq ft)	180,843	139,244	80,764	150,528	70,911	32,743	73,227	728,260
Open Space Requirement (Sq ft)	602,810	1,392,441	807,640	1,505,276	472,742	109,143	488,183	5,378,234
Minimum Parking Spaces	125	125	75	125	100	25	100	675
Minimum # of Affordable Units	5	5	3	5	4	1	4	27
Eligible for bonus units	No	No	Yes	No	Yes	Yes	Yes	-
Max # of Units with Bonus	50	50	38	50	50	13	50	300
Affordable Housing Units with Bonus	5	5	6	5	8	2	8	39
Minimum Parking Spaces with Bonus	125	125	94	125	125	31	125	750

Appendix C: Interview Transcripts

Interview with Carolyn Stevens 01/14/2016

T: What is your back ground and your relationship to the Pound Ridge Zoning reforms?

C: By way of background I am an attorney. My area of expertise was litigation, not land use, but I have been on a couple of land use boards in Scarsdale and I was the mayor of Scarsdale and more recently I have been a special consultant to Jim Johnson who's the federal court monitor on the Westchester County Affordable Housing settlement. And as a result of that I have interacted with Pound Ridge and other communities concerning zoning issues, infrastructure issues, and a number of other issues surrounding affordable housing and ummm is that enough?

T: Yea. Oh yea, no that's great. What prompted the initial reforms?

C: Well a couple of things prompted the reforms in Pound Ridge. One, obviously the analysis Jim did had an impact, John Shapiro and Brian Kintish did for Jim Johnson. That being said they also on their own, going back to the prior supervisor before this one, the present one is Dick Lyman and the prior one was Gary Warshauer, who is an architect himself, and in fact just as an aside is the architect on a couple of affordable housing projects around the county, but going back to Gary and his term as supervisor. They recognized a real need in particular in their downtown as I will call it, village center.

T: Is that Scotts Corners?

C: Yea that's Scotts Corners area. They have a real need for improved septic. They have a lot of water issues. Partly because they sit, part of the land in the area feeds a watershed in Connecticut and other part feeds the New York watershed so they got DEP, DEC, and some private water company all you know I guess a list of things they can't do. And because of the groundwater issues in the area there is no infrastructure, they have no public water, they have no public sewage. Everything is private, basically septic and wells, so they realized a real need to find other septic solutions. One of the ways and I know perhaps it sounds odd that you would consider you know density in order to deal with septic issues, but it allows for the contamination of other septic issues and not you know your own personal septic tank if you go to multi-family housing or you go to larger developments. That's one of the reasons they changed their zoning. They wanted to be able to improve the ability for people, well they would like to have more businesses, like the restaurants right now use paper plates because they can't they aren't allowed to discharge more than a certain amount of water everyday. So they can't afford to wash dishes. They have to save their water for food preparation and other types of sanitation. Just something as simple as that. They looked at these zoning changes as one way to continue the conversation about different types of septic. In addition, quite frankly, they have made an effort the effort has been on a smaller scale, but they did a couple of really interesting kind of shared housing in order to accommodate some of their own seniors. So they did one development that Gary actually designed up there, which I think accommodates eight seniors basically that live sort of on their own, but they have a large shared kitchen and some other shared facilities. I think there's two developments like that in Pound Ridge. And so they're really looking for other opportunities for their own residents that are sort of aging out to find places to live nearby. I think those are their three main motivations.

T: Pound Ridge is a fairly low density suburb with no multi-family housing in it currently. How realistic is it that there will be some type of multi-family housing development? Realistic in terms of overcoming environmental issues, procedural issues, as well as public opinion.

C: Let me step back for a minute here. A while ago, eight years ago, I think the main motivation was to try to be able to... They started looking at other septic solutions for their downtown, the

Scotts Corners area, so that they could basically have a more thriving village center. For example, the main supermarket there could only do limited food preparation because they had discharge a certain amount of water everyday. You know things like that. Also there are a lot of properties in that area that could be developed in that area were you to have different septic solutions. Politically, if the supervisor of Pound Ridge called New York's DEC and says look we want to look at some different septic solutions for our town's that include part of your watershed they may not even a polite response at first. But eventually they might get a meeting in which some low level DEC person listens to them and then they get no response. This has gone on now for a while. And so what they were hoping for was to find a way to change the conversation or to give a little political umph on their side, political weight on their side to get a real conversation with DEC. New York City is just not really interested in talking to a lot of the upper...the communities up county in the watershed. And until we solve the septic system issue, we're going to continue to run into development problems. Interestingly enough, one of the things that came out of a workshop that we ran, regarding Pound Ridge and its development issues was we got a conversation started between Pound Ridge and HUD because the idea would be for and this part of the conversation is probably more politically sensitive than other things I have told you so far. SO just keep that in mind because these conversations are still going on. The idea would be for HUD to intervene with DEC on behalf of Pound Ridge, as well as provide some additional funding for infrastructure development if we can get some affordable housing out of this. To fight for it that's fine. In the Scotts Corners area, which would be suitable and large enough for affordable housing could septic issues be dealt with and some of the other waters. Somewhere along the line and as a result of change of board those conversations have presently stopped, which is why I am saying that it is politically sensitive right now. We're hoping to get those started again. Now the new boards been formed and whatnot. Again Westchester because of its odd town/village conglomeration has...seems like every two years your boards are turning over, anyway, or changing in some significant way. So the election was in November, the new board starts in January, so we're hoping to get the conversation back going with HUD, so that HUD can help further the conversation with the DEC. But HUD, even there, and maybe you want to try calling the folks at HUD to see what their data shows, but in my conversations with one person at HUD that they were surprised to find how restrictive they found the water problem made building in Pound Ridge. And I should say water and septic together. And it gave them a different appreciation for some of the issues. But Pound Ridge realizes that its solution lies believe it or not in trying to do denser housing because only then can they get the conversations that they need to have to solve their other problems. At least that's...that's....that's where we started when I started these conversations with the prior supervisor Gary. And that has kind of been the thrust. You know it takes time, it takes time to build relationships and trust and to get some attention to hopefully so we changed their zoning so the zoning is in place in anticipation of the finding the septic solution which will allow them to build. But the building won't get done, without DEC accepting different forms of septic issues. Nothing will happen. That's kind of the bottom line.

T: To take a step back from Pound Ridge and looking at Westchester there's been the HUD Court Cases going on since 2009.

C: The settlement was 2009 the court case goes back to '06 or '07.

T: Yes. How realistic have the demands by HUD been for Westchester to provide affordable housing and multi-family housing in suburban communities? I realize that you have just mentioned the limitations due to septic and water systems. Basically are towns the places where these decisions should be occurring? Is there a role for the County?

C: The obligation under the settlement is the County's obligation. From my perspective, the County is failing miserably at the spirit of the settlement. Westchester County needs affordable housing and it probably needs it in all parts of the County. What the County...the County has not done a needs assessment since 2005. You know in ten years they haven't updated their needs assessment. Or actually it's older than that. They updated it in 2005. It was done I guess back in the 90s originally, the

Rector Study. So the County has ignored the need...and...it's been done as I see it for...and here I have to give a little disclaimer because I think I'm a little partisan in this regard, but I really feel that it's been done because Astorino when he first ran for office or when he ran in 2009 I guess against Spano and won one of the bug points he ran on was that he was going to fight the settlement. The truth is that he couldn't fight the settlement because it was already a done deal before the election was ever had but what he has continued to do was to say ok we'll get the 750 units built that we're required to, but we're not doing anything else. And to me the more important parts of the settlement were assessing need, were working with communities to help them develop solutions for their own housing issues. And every community, unfortunately, here in Westchester is probably different. But there's a huge need for affordable senior housing for example in Westchester. We are ageing more rapidly than a lot of areas around us. A lot of people don't want to leave because this is where their kids are or their grandchildren are and not everybody wants to retire to Florida. And my feeling is that if we could build housing for seniors other housing would open up for families. But the other thing is that housing trends are changing. You look at millennials and younger and they don't necessarily want to live, or at least until they have the second child, they don't want to live necessarily in a suburban community or at least a community that makes it hard to commute and where there's not a lot going on. If communities in Westchester are not going to wither and die we are going to have to find a way to accommodate the younger and older people. I guess one of my questions to you should be, when you say affordable housing kind of define your term because to me affordable housing covers everything from 30% AMI to 120% AMI. And a lot of people would say that that goes from low income to above average income. You know that group there, that 30 to 120% is what we sort of need to really address there in the County. So yea starting teacher makes around \$50,000 around here, which is higher than New York City. Then two teachers making \$100,000 a year, well there's still nothing they can really afford in around here. You know and that's also probably because they need two cars. And we need to be cognizant of that and also if you talk to a lot of large corporations Westchester has a huge amount of empty office space right now. I forget exactly how much, but we have a couple million square feet or more of empty office space. I think we have, I think the last number I saw was at a 30% vacancy rate in office space in the County. And a lot of those, a lot of corporations say that well people don't want to live here because their employees couldn't afford to live here. Yet some of them are moving to Nassau County, which their taxes aren't really any lower than ours, but what they do have is a larger range of housing options.

T: Yes, and in response when I say affordable housing I've kept that purposefully vague because during my research the term has been thrown around fairly vaguely. I've tried to not cap it out. The term is meant to be very fluid. It's more of interest to me to see what other people are defining it as. Say in the case of Pound Ridge, when we are talking about affordable units there's income range, but there is also the types of affordable units. So when you're talking about affordable senior units versus affordable family units versus affordable units. I'm not as interested in looking after one particular, but in general what is going on in the County and within the Town of Pound Ridge. So that's why it's vague.

C: Ok, I think one of the difficulties has become I think for the conversation in Westchester is that the housing settlement agreement itself defines affordable housing in a certain way and it defines it as for rentals 50-60% AMI and for homeownership 70-80% AMI. So AMI in Westchester County is around \$105,000, if you don't have that number, so we are not talking low income housing. So take for example the community of Lewisboro. Lewisboro has also been working on zoning changes. They are looking at doing a couple more. One of the things they want to do with their code though is they want to if affordable housing is built they want to give preference for folks who are EMT or basically emergency responder, police, fire, and medical who provide emergency services up there. Because one of the difficulties they have is getting enough volunteers, particularly for fire and ambulance and being remote they need that. They can't afford, I mean their taxbase, can't afford a lot of professionals in those areas. Police gets a little more complicated, but they again, for example in Scarsdale, I want to go back to when I was mayor, I think it was March 2010. We had in Scarsdale one of these microburst things go through here, we had huge rain and wind storm. 80% of the

village was without power, but in the midst of all this, the storm itself was sort of an ice storm with a lot of wind, and our fire chief, he lives up in Dutchess, he had trouble getting here. And why is he living up there, even though he's making a six figure salary, he can't afford to live here. And a lot of communities here in Westchester are like that. Our schools get closed on days when there's hardly any snow here, but up-county further north there's a lot of snow, because that's where our teachers live. So we really do need to address those issues. And I think chiefly, millennials, they, our police chief initially lived just south of Poughkeepsie and he drove to Scarsdale everyday. That's where he started living when he was a patrolman. And he would have an hour and 10 minute commute and that was in good weather. A lot of young people don't want to do that anymore and I don't blame them. When do you see your family when you do that? And most people, if both people have that kind of commute, it's crazy. So we really need to solve some of the affordable...now unfortunately one of the things the settlement did and I get it, was they had to educate communities, which the County failed to do by the way, and to spread out some of the affordable housing so it is all over. A lot of the affordable housing being done in the County, it's not multi-family housing. A lot of it is single unit or two family or whatever. Some of it has been developments, but a lot of it's getting done in smaller units of housing. SO we're not really seeing an increase in multi-family housing.

T: What was your role in the Berenson report and would you say with the larger reforms going on there is a larger regional concern with the towns in Westchester?

C: Ok, my role with the Berenson report was basically to help gather information for Jim. So initially it was John Shapiro and Brian Kintish did an analysis on the information they could find. They did a draft report and then taking some of these drafts, I would interface with some of the communities to check on certain data, not all of them, mostly the ones where there seemed to be issues. And then basically the rest of my time was spent trying to calm people down as to what the report meant. So some of those communities were very anxious to get off the bad list or to get off the list that indicated that they had a problem, a Berenson issues. Other communities could care less. And we worked with those communities, like the town of Ossining and things like that and Mamaroneck and some of those others. In most of those cases it was really a lack of understanding, on Brian and John's part on what was really going on in the community and part of it was simply that old zoning practices had never really been looked at with the sort of microscope we were using for this and some changes were made. In most places, I guess Mamaroneck had its own Section VIII housing office that it ran itself, but was not reflected in some of the town's zoning. There's no way to account for that. So there was a fair amount of affordable housing in Mamaroneck, but it was hard to identify. But also they had only one area in town, and here is the overlap of towns and villages and I'll get to that Mamaroneck is a perfect example. The town of Mamaroneck includes the village of Larchmont, part of the village of Mamaroneck not the entire village, part of the village of Mamaroneck is in the town of Rye, which is different than the City of Rye by the way, and then there are unincorporated areas in the town of Mamaroneck that aren't in the village. So what you often had to tease out was, in Mamaroneck's case, their Section VIII housing covers the entire town even though the villages that are in the town. It's not really obvious on its face. But also the town itself for its unincorporated areas had only one area that was really zoned for multi-family housing. So what they did was they changed their zoning to allow for the development of multi-family housing in commercial areas. And to me that change will ultimately have the effects we are probably looking for.

T: What is the ultimate goal that HUD and the Westchester Housing Monitor are looking to achieve in Westchester?

C: Unfortunately, I want to say that the settlement as it was initially drafted was probably not really...I think the settlement does not reflect ultimately what people want or need in the County. It was drafted, unfortunately, by lawyers sitting in Washington DC instead of on the ground here and I think that it's not the best way to get affordable housing done here in Westchester. What I hope will come of it, what I hope would come out of it...you're stuck working with document you have and I was hoping we'd see more education more analysis of needs and the County working towards

more creative solutions for basically all communities in Westchester. We haven't gotten that. What we got is a lot of the counties, the County government itself focusing on where to place 750 units of housing and not much else and what you've managed to do is get some communities who see that in order to grow and that kind of prosper and survive that they need to make some changes themselves. And what we've managed to do is support some of that. So like you said, Pound Ridge looked at its septic problem and realized they weren't going to get any economic development of any kind without addressing the septic issue and one past that is to look at changing housing. A town like Mamaroneck realized that it has whole areas, particularly US 1 which is Boston Post Road, which are just the most strip-mally type things and not very attractive and often these days have vacancies etc. and they need to rethink how to make some of that area more vital and housing is a perfect way to do it because 1 has buses, it has transportation, it's close to shopping. You know that type of benefit. So to them rezoning that made a lot of sense. I Scarsdale I passed, I was mayor when the settlement first came in and I think we were the second community in the County to pass the model code, which called for a minimum of 10% affordable housing if anything of more than 10 units is built. Now we don't have a lot of open space in Scarsdale, but the truth is I was aware of a couple of developers who have their eye on a couple of pieces of property where one wants to build some town houses and one wants to build some condominiums or something. So I figured let's get this in before we start those conversations 2007 came though and after 2007 not a lot of people were having those conversations, but at least it's in place so when they come to the table the next time it's there. My hope for the settlement has been that we would have more of those types of conversations with communities that would say, look at your ageing population, look at your young people, they don't necessarily want to leave Scarsdale, but there's no place for them to live. How do we solve some of those problems?

T: Are towns taking regional needs into consideration?

C: No

T: Ok, if you want to elaborate on that please do. Could please clarify the difference between a Berenson and Huntington report?

C: Alright, most of the communities you will get folks, you will get some folks, who are cognizant of good planning principles, which is kind of what Berenson reflected, in that a community should not just address its own itty bitty needs but needs to look beyond its borders when instituting zoning and it has to help to accommodate the regional issues. There's so much and Westchester is not the only place, but there's so much NIMBYism. And there's so much, and we're seeing it right now in the discussion in Buchanan, we want housing for our seniors, but not somebody else's seniors. Well maybe that person in town's parents live in the Bronx and they want to move their parents up near them because their parents are ageing and they want to be nearby. That doesn't seem to resonate too terribly well and I want to say back when we started this these types of things resonated better. I would say that since we have started or maybe people didn't feel as empowered to speak badly, but I would and maybe this is more than you want, but I feel really since this whole Trump, people like Trump and Ted Cruz have basically given people who might have otherwise have been embarrassed and realized what they were saying was wrong or thought was wrong and were willing to suck it up and do the right thing, it has emboldened them to say I don't want these people here. And I have to say in the last year that tone has gotten worse and not better. And I really do, that the Trump's and Cruz's and others allow others to express those ideas more openly and feel that they have the right to enforce those opinions. They don't get the concept that the community is just broader you know than the two houses next to you. They really don't seem to want to deal with it or get it.

So in terms of Berenson and Huntington, the Huntington analysis is just being finished now. Jim is about to issue the Huntington analysis. I've seen a couple of the draft sections, but I haven't really done too much with it. The Huntington analysis, of course is...a town like Tarrytown, which is probably even though it is on the list is probably one of the more diverse towns in Westchester in

many regards. It came up initially both with a Huntington and Berenson issue, but once you got on the ground and realized where these sections of town were you realized that the zoning was not intended to have the consequences it was having and in fact there were other factors involved in the housing patterns and not zoning. Again things having to do with infrastructure and stuff. That's why we're giving communities more time to respond to the new Huntington analysis than before was because of that type of needing to be on the ground to really understand what was going on. You also have a lot of communities where you have illegal housing and one of the things I was hoping was going to come out of the settlement was ways to address that illegal housing because it's not good for the communities, it's not good for the people living in it. It provides a public safety issue. The schools can't get a real handle on census populations. It's just creates a whole bunch of issues. So we have communities like Portchester, Ossining, Tarrytown, Harrison especially, they have a lot of illegal housing and what winds up happening, Harrison is a good example, if you look at the schools and the diversity of the school's population is not reflected in the census figures. One of the reasons it's not counted in the Census figures is it's illegal housing, a lot of those people are never counted. You know if you have a private family home that has been turned into eight apartments and you have one mailbox out in front it is hard to deal with those issues. And some communities have tried to solve the problem and some have turned a blind eye to it. SO you wind up with a disparity between, like the school population of Harrison has a significantly higher number of Hispanics than what is reflected in the general Census numbers for the town. And as a result it does not get some of the aid it should be getting. So housing and zoning are important, but...I'm not sure if I feel more or less hopeful after talking with you.

T: Yes, the more and more research I do the more and more questions I have.

C: I would love to see the final product by the way.

T: Yes, I would be more than happy to send it over to you. I really have to thank you so much for taking the time to speak with me.

C: And if you have any follow up questions please feel free to reach out because what I'm hoping is maybe as you work through your thesis you'll have some ideas or thoughts that will be valuable to us.

...

C: And let me just tell you, I tell this story a lot. It goes not just to affordable housing, but particularly to suburban areas. This goes back to, when was I on the village board, I guess it was 2003 I first went on the Scarsdale village board. And at that time one of the big issues in our village was we basically had this old area in town, an old garage that was built in the 20s, but of course it was Scarsdale so the outside was very nice it was all stone, but there had been a gas station there and it was closed, brownfield issues, the garage, some guy there was still running a parking operation there. But it was ugly, it was an eyesore, it added nothing, it detracted from the village, it provided no real economic benefit. The village going back to two boards before the one I was on, they basically wanted to clear that block off and put up a garage. The last garage that had been built in Scarsdale was built in the 70s or 80s and was on the other side of the railroad tracks near the train station and was ugly as hell. So everybody opposed, or at least a large number except for commuter who wanted to park there, so many people opposed the building of a garage. And then I get on the village board and I start talking to some folks I know who do a lot of real estate work and they're all saying, don't build a garage, build a garage as part of something else. But the village doesn't want to build housing, it doesn't want to build commercial space, it doesn't want to be in the development business. That's not what small villages do, we don't have the staff for it, we don't have the expertise for it, it's not what we do. We pick up garbage and we move snow and provide police and fire and that's what small towns and villages do. Again talking to, because Scarsdale's got a lot of interesting folks so I started talking some architects and developers who live here and we came up with the idea of trying to do some kind of public private partnership with a developer who would give us the 330

parking spaces we needed and we would let them build something else. And ultimately we decided on an age restricted market rate housing and some commercial space. There were some other things we wanted, but the point being that even with that kind of a concept you had people turning out opposing it. Not because they, if you asked them they agreed we needed more parking, they agreed they would like to see more shops, they agreed they would like to see some more residents, they agreed that seniors needed more housing. But everybody was afraid that it would turn out bad. Instead of having a vision of something good, most people go to expecting the worst. And if you can figure out how to get past that you will solve more housing and development...I'm serious. When I looked and listened to these people, really listened to these people, they were scared. Because they liked what they had and weren't sure that the changes would make it better and in fact sure that the change would make it worse. And I don't know...Now everybody loves it and they think it's best thing the village ever did. And I know when we get another piece of property where something like this should happen and I know when we begin to have that conversation we'll run into the same problems. But I also know people will like at the other one and think maybe this didn't turn out so bad. So the conversation won't be that bad, but it will be bad once in a while. And as part of your thesis dig into the psychology involved.

T: Yes, I've been very interested in the work that WXY Architects has been doing with your report, Ten Steps to Creating a Conversation. I've noticed that even as a project may be practical it runs into a problem procedurally.

C: Procedurally yes. One of the nice things about Scarsdale is it's (inaudible) and why we're able to get something done (inaudible) controversial like that is that we have term limits that are self-imposed. It's the way the village has done them since 1923. And we don't have political parties. We are not partisan on a local level. It keeps people from taking positions in order to get elected and then feel that they have to backup, even if they think the position is wrong. And then people want to get re-elected, well why can't you just do the right thing and then move on. But I also think the tool we used for the workshop, the workshop that WXY did in Pound Ridge, this Tygron tool is really a big leap forward in how to have a conversation. And is really a way to engage people before they're afraid of something. One of the main problems I see for development in Westchester and in a lot of places is that the way it works is that the developer come in with a plan, I want to build this here and then everybody scurries around trying to fight. You might get a few supporters, you might, but the knee jerk reaction of most citizens is, I think, to fight something that's going to change their "way of life." And I put "way of life" in quotes. And so what the Tygron tool allows you to do is to invite all the stakeholders in, put them at the table, and say ok allow you to frame a problem and now how do we all solve it. It's a very different conversation. So yes I think process and procedure do make a big difference. And the zoning code can have a little tweek in there, but it's ultimately the process is more important than the code.

C: Scarsdale was one of the first communities in the country to enact zoning and was probably one of the first in New York State. They put it in in 1925, the discussion started in 1923. When I go back to some of those older documents it's really rather interesting because at the time there were two railroad lines that ran through the village. One of those rail lines no longer exists. It was the Boston/Westchester something or other. And what they did was they zoned for multi-family housing, and this was the 20s, it was zoned for multi-family and commercial around the two train stations. I mean how smart was that? They realized that there was plenty, and back in the 20s there were a lot of estates up here. You first started to see people move up here to commute to the city, but still a lot of this was like weekend and country homes for people and so they had some estate areas and stuff and they knew there were large parcels. They zoned like around the two areas, the two commercial areas around the train station were zoned commercial and multi-family and then as you went out from those two train station areas there were sections that were done by 50 by 100 lots because they realized that they needed housing for people who were working in the city, but they also realized that they also needed housing for teachers, and these are in the notes, we need places for our teachers and firemen and sanitation workers and etc. to live in addition to having the other larger estate

areas. Now could you say they were wanting to segregate that housing? Maybe. But at the same time doesn't it make sense to put all your...but the principles they had then concentrating the 50 by 100 lots in two areas, actually there's a third area, but unfortunately those houses now go for $\frac{3}{4}$ of a million dollars to 1.5 million dollars. So they're no longer affordable, but the point is they planned back in the 20s for two or three areas to have that housing. They planned for multi-family housing, in fact the multi-family housing never got built in one of those areas isn't their fault. It's the fault of the family that still owns that property that owned it back in the 20s. They never wanted to build housing, they just built commercial. Nobody thought of trying to make somebody build some housing. So a lot of the zoning that was done and...(inaudible)...a lot of the zoning was then done to reduce parcel size throughout the village over the years. And now we're at a point where no one wants to reduce anything. But it's really sort of interesting if you look at older communities as opposed to newer communities and when you look at a town say like Bedford or Pound Ridge there is no public water, there are no sanitary sewers. Those people either arrange for private garbage pick-up or they take it to the dump themselves. The types of services that multi-family housing needs are not available. And one of my concerns with the settlement was, we build an affordable unit in Bedford and it's a rental, so you've got a family of four making \$53,000 a year, how does a kid get to soccer practice? You know from a very practical point of view what type of life are we really creating for people. So yes we need affordable housing in those areas, but who do we need it for? What do we need it for? I don't know if when we instituted the settlement, did anyone think about that. That's why we need the needs assessment. A new one. To figure out what we do need and where.

T: Is the former needs assessment available online?

C: Yes

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End

Interview with Richard Lyman 01/16/2016

T: What prompted the change in the zoning code to allow for multi-family housing by permit and to also mandate affordable housing of any development over 10 units?

R: Well I think that's implicit in the settlement. The truth is we actually had provision in the ordinance for multifamily housing prior to the settlement. Had it for many many years. But it was related to providing housing for our seniors. We have not a small number of, interestingly and primarily, widows, who were living in large four bedroom colonials and they're reaching a point where they don't want to leave Pound Ridge, but they don't want to maintain these large homes anymore. It was not a question of economics as much as it was convenience. When the housing settlement came down it was abundantly clear that that was not going to pass the muster with the monitor zoning wise and so we undertook revising our regulations to accommodate for affordable units.

T: So the provision for multi-family housing had previously existed?

R: It had previously existed under our special permit provisions on properties of more than 20 acres. And that's not some number that was picked out of a hat. Because you have to understand, as I think I explained to you in an email, if it wasn't you then it was this guy from Atlantic monthly, we have no infrastructure here. Zero. We have no municipal water. We have no sewer systems of any type. Everything is private well and septic system. And we don't even have a traffic light. But the primary driver, I don't want to get too off topic, the complete lack of infrastructure means multi-family housing is not going to be typically on a basic septic system. It's going to have to be on some sort of large scale water treatment system. You're talking 20-30 units, whether it's all affordable or not, it makes no difference. Still is something that that has to be accommodated. And I really, the reason I wanted you to come today is because I really want to throw you in my truck and drive you around town a little bit so you can really get a feel for the topographical constraints that we face. That are unique to even most towns in northern Westchester. And it's important that that's understood. It was a very interesting conversation we had with the federal monitor, who, Mr. Johnson, was questioning the 20-acre figure and justifiably. We eventually convinced him to actually come and visit Pound Ridge. And he did. And when they actually saw what we were talking about there was a change in the conversation. It really was an eye opener for them. These are really significant impediments that must be overcome. How do you do it? I don't know. Because the other piece of the puzzle is economics. We have to, under the settlement, have zoning in place that will allow for development of that type, but we don't build it. The economic realities of it are that developer, even with subsidy, we haven't yet identified a project that the can do to make a profit.

T: Even with the workshop done with WXY Architects?

R: WXY was a fun exercise, it was a waste of time. I learned things that I didn't know, which is of value. I had people from my planning board there. And there were people from all over, it wasn't just an exercise for Pound Ridge. So there were things of value that came out of it, but WXY the way it had originally been proposed to me when we were all done with the exercise we would have what could be a workable plan for our small shopping area down here, which is where we have primarily designated if we can get it done some form of multi-family housing in that area. Because it offers the best opportunity for people who don't drive because they can get their basic needs and because of some waste water issues we already have there it offered the best opportunity for solving two things at once.

T: With regards to waste water, it is my understanding that the restaurants and businesses in the business district are running on well and septic systems and are limited in terms of their discharge?

R: That's right. Two of the four eateries, actually there are five, two of them are on paper products. Paper plates. Lined baskets with a liner in them. Not dishware because they don't have the capacity

to wash dishes.

T: Pound Ridge was identified as exclusionary under a Berenson report, which stems from the notion that towns must take regional housing needs into consideration when implementing zoning. When Pound Ridge is making decisions is there talk of regional concerns?

R: Well there is in that we do submit major things to applications to the Westchester Department of Planning. In particular, there are requirements for something we do that borders county property or county road, but bear in mind that our zoning has been in place since 1935. And that's the basis for it. And Berenson interestingly enough is a little backwards for Pound Ridge because the thrust of that was you couldn't encourage commercial development and not provide for housing. And in this case what's our commercial development? We're not inviting IBM here to build some kind of facility here and not providing for some kind of housing that goes along with it. So some of the tenants within Berenson don't even really apply.

T: In terms of commercial development in Pound Ridge, is it just Scotts Corners?

R: That's it. You have up at the other end of town here the Pound Ridge Nursery. Farther up, which has been here for gotta be 80 years the Marshall Oil Company, which used to be an ice and coal company. These are both in residential zones. They're commercial properties in residential zones. They operate under special use permit. Actually I take that back, the nursery. We created a nursery landscape zone for that. For a variety of reasons. One of these reasons had to do with development of the property at a later date. That's it.

T: Is Scott's Corners the only place that would be suitable for multi-family housing?

R: No, there are some other properties that fit the criteria and we have allowed for them accordingly. Our special use permit does require some things that does raise some eyebrows initially. And one had to do with the proximity of the property to a major road. And that's primarily because of access to what would be a larger development. Larger buildings, let's put it that way, for firefighting and emergency purposes. When I take you around on some of the back roads you'll get the feeling for why we actually put that provision in place to be able to get to a facility. Losing a single family house because it's hard to get to is a tragedy. Losing a twenty-unit condo because you can't get to it is disastrous. And there was some really hard thinking that went into that. It's real what we deal with here on a daily basis. Even on conventional development in the 3 acre zone, new housing lots are on more than 5 acres just because of the development constraints.

T: Is 3 acre the minimum lot size?

R: No, we have 1, 2, and 3 acre.

T: So there are the practical constraints to development, topographical, wastewater, and other development concerns. Then there are procedural constraints as seen in the multi-family housing development in Chappaqua, which brought about strong public outcry. I'm not sure where the project is right now, but...

R: It's approved. It's a very funny thing. Johnson initially, when there was such a strong public reaction to that project was all for it and the town board had approved it and then there was an election. And the new board took it away. And so Johnson then, I forget how the whole thing came out, but the project came back on again. And when it came time to count the units for Westchester County in their progress report, Westchester County counted them because they had met all of the criteria in the settlement. Johnson then came around and flip-flopped and said that the project was not suitable to meet the criteria for the housing settlement. It was really quite comical, but I'm sure not for Chappaqua. But in the end, it is my understanding, that that project has now been, the permits are in

place and the financing is in place and those units were counted, so that's going forward.

T: If there was plan with a developer that met all of the environmental concerns that the town faces, what are the procedural restraints that the town faces?

R: Ok, I can answer that. We had a project called Ridge 29. The developer had come to us probably close to two years before he even filed his plans to start talking about his whole approach to development and what he was doing. I had even said to him at the time why'd you pick this piece of property? It's a tough piece of land. I grew up here. There's not too many places in town I don't know. And he said because it's a tough piece of land. This is the kind of property we like to develop because we can show how you can work with the environment; he went through this whole schpiel. So the way the special use permit process works, you come to the town board with your project, we look at it from a really cursory, does this meet our goals and our criteria. If the answer is yes then, and just about all the time it is, we refer it then to the planning board, who actually conducts an in depth review and then they come back, the planning board comes back with a recommendation to the town board that says this is a viable project and worthy of a special use permit. So we then authorize the final engineering review. But at that time the town board is essentially saying we will grant the special use permit with the recommendations of the planning board. This particular project came to the town board, I wrote the referral to the planning board and said that this is a very important project for the town because it had five units of affordable housing there was a lot of stuff and that they needed to look at this on the cursory to say yea they meet all the criteria set forth in the law so we really tried to push it. The DEC then stepped in and rejected their plan for their septic their water treatment, which was a cornerstone of their whole development. It was a constructed treatment wetland. And because it was going to be the first one done in Westchester County and it would be managed by a homeowner's association, DEC rejected it. The developer tells me the project is not dead, but we haven't seen him in almost a year. So that tells me something. I spoke to him before Christmas and he said he was looking to do something else, but I don't think it's going to happen. And therein lies another one of the difficulties in the town says yes we did everything we could to push this and the typical neighbor opposition to any project and then another agency steps forward and says you can't do it this way. So does that make Pound Ridge bad? I don't think so. We're caught in between.

T: In terms of this specific project, it was rejected because the water treatment system was going to be overseen by a homeowner's association as opposed to a private company as is the case with reservoirs?

R: You're talking about potable water. Here again that whole thing was going to be in a private well. The potable water forms a constraint for us. We've been described as the drinking cup for the City of Stamford. Our reservoirs provide all the drinking water for the city of Stamford. And part of our drainage area also goes through Greenwich American Water, which feeds Portchester. But none of the water stored in reservoirs in Pound Ridge is used in Pound Ridge. It just goes by river down to the Stamford Reservoir. But they are large land holders. And in fact they wrote a somewhat scathing albeit not factual letter to the planning board denouncing that project. And it's something that the planning board would of course take into consideration, but DEC torpedoed the project before anybody had an opportunity to even really get into it.

T: Has there been other developments that have been proposed for Pound Ridge?

R: Right near Scotts Corner there is a 28-acre private piece. I took, the owner died and I took the maps myself and had a meeting with the chief of staff and the County Executive, the Department of Health, Westchester County Planning Department and we all sat around the table and I said there's a 28-acre piece that fits all the criteria. And they brought a developer in to look at it and he walked away because his business was essentially buying and rehabbing apartment buildings and stuff where there's municipal water and sewer. He had no clue how to deal with creating a separate

water system just for that property to feed whatever's built and a septic system big enough to treat it. He was like a fish out of water and it died. Never heard another thing about it. And it just points out, I think again, this guy had pretty deep pockets, when push comes to shove the cost of development exceeds the opportunity for a profit.

T: In your opinion, do you think multi-family units could get built in Pound Ridge?

R: Yea, I think so. One of the things in my talks with Holly Light and her team is that you can't just build multi-family affordable housing because the cost of development is so high, the rents and everything is so low or the sales price, take your pick even if they were sold are so low in based upon a formula for occupancy that it doesn't work. And I think a good example is there is a development up in North Salem called Briddleside. And Briddleside I think they wound up with 65 units all affordable. But I believe there was just in County funding alone, and I don't know about all the other tax things that go into it, because the guys that really do this can play the tax game. It was \$960,000 cash that went into developing that septic system, but they had the room, they had the land to do it. When Johnson's team came up to see the project the response was well where's the town? Where's the transportation? Where's the train? Well we don't have any of that. We got 65 units of housing I believe right now the last I heard it was almost 70% of the units ended up rented to North Salem residents, which completely defeated the whole notion that HUD had or the law center or whatever I forget the guy's name, Gurian, that we need to be marketing these units in the Bronx and in Brooklyn and to get more diversity up here. Well, if you don't have a car, you're screwed. It's the truth. It's a reality. So where you have people who have no idea what things are like up here just checking a box doesn't work. You got to see what's here. You have to understand that it's real.

T: Do you have a planning firm that works with Pound Ridge?

R: FP Clark Associates

T: And where are they located?

R: They are located in Rye. They worked on drafts actually to the changes in our zoning. They were the consultants on that. David Stolman is the President and he in fact worked personally on that.

T: Are there any maps or GIS shape files for topographical features in Pound Ridge.

R: There should be some access on the town's website.

T: Yes, I have gone on there, but it is limited.

R: I think if you reached out to David Stolman personally and asked for some of the data I'm sure that they would be willing to share some of the information with you.

...

T: In your opinion, does HUD go too far in getting the County involved in local affairs or is the County enforcing AFFH a legitimate goal for the County?

R: That's a difficult one to answer. I'm not uniquely positioned to talk about Astorino's positions on some of what he's taken what he has claimed and it has now been upheld in the courts in a couple of places that the monitor was overreaching on what he was demanding from the County. And what the County has said in fact that New York, not just Westchester County, New York is a home rule state. And that if HUD had an issue with a local municipality they needed to go after that directly. What the monitor was saying and I don't know if this is written in the Court settlement, I have read the settlement, was that the County would be required to sue a municipality if it was determined that

they had exclusionary zoning. The County's saying well that's just not our job. And by the way we haven't found any exclusionary zoning. We've done what eight analyses of impediments? I think that's what's been done and more than any other county in any state has ever done and more comprehensive than it's ever been done, but because the answer keeps coming up not what people want to see there's an issue. As it applies to housing and zoning the County has very much a laissez-faire attitude position. And I believe that's correct. Now I could tell you bunch of other things about County government, but we're not going to go there.

T: Has there been an effort by the town to provide affordable housing other than multi-family housing?

R: Yes. We have authorized over the years the use of accessory apartments, so that, and we have revised that on a few occasions now because we weren't getting enough, so we have eased restrictions. The original restrictions were that there would be set number that would be allowed and that there was a sunset provision so that once that number was reached it died off and we changed all of that because what we discovered was number one, was and part of the genesis of it was there was a whole slew of illegal accessory apartments going on. People just renting this stuff. So what we were hoping to do was by legalizing it bringing them under the umbrella of government as it were it would provide for better safety and because there would be some sort of regulatory atmosphere. What we found was nobody came forward. A few people came forward with new proposals. And so it didn't work. It didn't get us what we wanted. So we eased the restrictions. The original restrictions were that it had to be within an existing building, we have now eased all of those restrictions so that it is also in newer constructions that it could be allowed. We're providing also for the opportunity of within a quarter mile of Scotts Corner if someone wanted to have a two or three family house that would be permitted under a special use permit also. But here again no one seems all that interested in trying to do anything.

T: Does the County, HUD, or any other agency yet to be mentioned expect anything from the town other than to leave the zoning provisions open for development.

R: Our goal was to provide for the opportunity, which is what we are doing.

T: With these recent efforts to provide multi-family/affordable housing, has there been a goal on the part of the town or has the goal been compliance with the housing monitor?

R: Our goal has been compliance. And I think part of that really has to do with realities. We talk about affordable housing, but the real term is AFFH. And the goal is not just economics, opening things up to make them affordable. The goal is essentially enforced integration, which to the community that has decidedly liberal bent. Let's put it that way. I'm one of the old dinosaurs. But to be told you're a racist is insulting because we are an open and welcoming community. And nobody cares what color their neighbor is, what ethnicity they are. They really don't. All they really care about is can you afford to buy in here and maintain your place the way you know the way the rest of us do. That's it. So we were told, so in that regard we've always been an open community and so to then be told you that you are not, you are exclusionary, you are excluding and in particular, which I found particularly insulting was that you're excluding blacks and Hispanics. But what about all of the other ethnic groups. That just irked me because we have people of all persuasions who live in Pound Ridge. We apparently don't have enough of the two groups that have identified and that to me is weird.

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End

T: What is your background and your relationship to the Pound Ridge zoning reforms?

B: Ok my background is as an urban planner, who studied at Pratt. There I got to know John Shapiro who was one of my teachers. Then I worked at the NYC Dept of City Planning. I worked for John Shapiro's firm which was then known as Abeles, Phillips, Preiss and Shapiro. I worked there on the report dealing with the Yonkers fair housing settlement. I then worked at a small firm called Wall and Associates where I divided my time between mainly Environmental Assessment statements and NYC zoning studies. So my background is mainly but hardly exclusively in New York City. I did review some fair housing matters for different communities for Abeles, Phillips, Preiss and Shapiro, mainly for New Jersey. I then worked for a larger engineering firm doing called Stantec where I worked exclusively on Environmental Assessments. After they terminated their EIS section, well it's a multinational firm but the New York office terminated its section. And since then I have been working freelance. I contacted John and he was then in the midst of preparing for the report, the initial report we did, what has been called the Berenson report or rather the housing consultants contribution to the Berenson Report. There I took over for John, his time was certainly overbooked and worked with a graduate student. She did the draft sections for each of the municipalities. I edited it, revised it, wrote the introduction, and then worked with the folks at the law firm to further revise these reports. The methodology had been determined before I was involved so it's not necessarily methodologies that I would use in all cases, but the methodology was hatched out in elaborate discussions between Westchester County Officials, the Pratt team with John Shapiro and Ron Shiffman, and the Monitor. I then also worked on the demographic analysis which was our contribution to the Huntington Report. And that's it.

T: What prompted the reforms in Pound Ridge?

B: I assume it was the settlement that prompted it. And the continuing urging of the monitor. The reforms were in part adoption of provisions of the county-wide model ordinance, which is what creates the mandate for at least one affordable units in a development of 10 units. It also provides for in addition to those mandates, expedited review and other incentives for affordable housing as well as definition for what the income level is for the income level for these units, and provisions that these units remain affordable in perpetuity. Besides from that I mean I can say that in my dealings with the Town Supervisor I certainly did not encounter any resistance to this notion. I can't speak to the politics in the town or in the past. Carolyn Stevens would be the person to talk to about that. In Pound Ridge zoning is not the main issue. And this is something to be borne in mind. Zoning is something that can be used to prevent affordable housing. Or to prevent the construction of affordable housing outside of certain particular locations within a municipality. It cannot in and of itself create affordable housing. And in Pound Ridge the determining factors are more environmental than zoning. The topography; it is a very hilly area with lots of slopes on which you cannot build. Lots of area where there is not sufficient drainage. Wetland area. It is also within the basin of two water districts, NYC's water district and Stamford's water district. Now Stamford the way they treat their water district is that they have actually acquired the land turned it over to a private firm that manages their water supply. So those lands are completely off the table that are considered the watershed or the rivers that flow into the areas that from which the city's water is drawn. And New York City what it has done is impose regulations that the state has allowed to become mandatory and binding on the municipalities that are affected. And that basically is the city's Department of Environmental Protection the ability to create regulations and basically to determine what can and cannot be built in those areas. Also you have because of the extensive wetlands you have the involvement of the New York City Department of Environmental Conservation which can determine what can and cannot be done. And $\frac{3}{4}$ of Pound Ridge's land is constrained in these ways. Plus, that doesn't include other areas that may be wetlands scattered wetlands and extensively steep sloped. It's very hard to build dense housing. Also there is no municipal water supply and there is no sewage. So you are entirely dependent for development on wells and septic tanks. And the prospect of

septic tanks failing is the major concern of the regulatory agencies. So what needs to be done within zoning reform, zoning reform basically puts the rules in place for such a time as there is the ability to construct housing or dense housing. And that would require either construction of sewer, sewer lines, that's an infrastructure issue that comes up to the County or the County's ability to get funding from the State or the federal government to allow this. So either the infrastructure of development or the construction of smaller sewage processing units. Package unit, which is what the town administration is looking at in Scotts Corner, one of the only commercial hubs in town which is where the multi-family housing is now allowed after the zoning reform and is where the town is trying to find location for affordable housing. Still anything they propose has to get past the various reviewing agencies, State DEC and NYC DEP. Or finally figuring out some housing design solutions which would limit the potential environmental damage footprint. WXY I don't know if you spoke to those people they are working on those solutions. What really became obvious, in Pound Ridge particularly but in that northeastern part of the County in general is that you have to look beyond zoning and you need to work on residential construction design that will be both affordable and environmentally friendly. And that is why the monitor brought in that group through Pratt's recommendation to work on that element of it. In Westchester, in addition to zoning constraints, you have in the southern part of the County municipalities that are pretty fully developed so it becomes difficult to find new locations for new multi-family housing development and in the northeast you have a completely different problem in water and sewage and environmental constraints. So we have been maintaining that a constraint is not a fatal and final inhibition to the development of multi-family housing it just makes it more difficult. You have to have the willingness to provide and the money to provide the infrastructure or you have to be creative. Another piece of this is what really should happen is you should bring representatives from the regulatory agencies and administrators from the municipalities in that part of the county and county planning people together to discuss what's possible and what is not possible. That is not something that the monitor could accomplish. That is something that in a rational world the County Executive would be taking the lead on. But the current Executive is not going to do that for various ideological reasons including the fact that it would indicate that government regulation can be made to work. Whereas his position is government and government regulation is always the villain. So that produces an additional problem in this case. I think I've given enough of a monologue here. I'll let you ask the question.

T: What would say is the ultimate goal of the housing monitor, first in Pond Ridge specifically, but also Westchester County?

B: The goal is probably twofold. One to eliminate the constraints, the governmental constraints against fair housing. And that involves mainly the reform of zoning. Second to spur these communities and developers active in those communities to create housing at least the minimal number of units called for under the settlement.

T: Are towns in Westchester County generally and Pound Ridge specifically taking regional housing needs into consideration when developing their plans?

B: Once again the politics of these municipalities is not something that you should be asking me about, you should be asking Carolyn. But in general I would say no. Municipalities are not going to concentrate on regional needs. It's not a matter of their good will or lack of goodwill although that certainly comes into play. You have certain municipalities, a number of them, where there is ingrained resistance for various reasons, resistance to change, racism, fear. But regardless of that somebody who comes into office is concerned about local considerations, the budget, taxes, one would hope the environment of the community, one would hope affordability, diversity, and sense of community, one would hope a for a concern for the ability of children who grow up in the community can stay in the community can afford to do so can find work, and similarly a desire to allow people who have lived in the community for much of their adult lives to continue to live there in retirement. So there could a very great incentive from these concerns to focus on affordability of housing and range of housing type, but numbers that would reflect a regional concern that is some-

thing that the regional folks should be looking at and then working with the individual municipalities. That is never going to be the prime focus of any municipality. I will also say that the numbers that have been drawn up that are the regional allocation numbers are something that are ok they exist, we all live with them, they are numbers we have. Ok, they came out of a Rutgers study. Are they correct number? Can anyone figure why those are the correct numbers? No. I would assume the folks at Rutgers looked at matters such as extensive vacant land, but would not have delved into considerations of how much of that land is actually buildable. They looked at transit ok. The rail lines are fixed and certainly you would want to create denser development where you have the rail station, but bus lines are not fixed and there is no reason to housing and population density based on current bus routes because they are subject to be changed. So what I'm basically saying is we all recognize what the cumulative regional housing needs are, but their allocations to the different municipalities are really somewhat arbitrary and one cannot really blame any municipal officials of being somewhat dubious of them.

T: Pound Ridge was recently taken off the Berenson Report list of exclusionary zoning towns. Could you just elaborate a bit as to why Pound Ridge was taken off of this list?

B: That was because the reforms the instituted to their zoning code. To provide the mandatory requirement for the inclusion of affordable units in large developments and to provide some opportunities to provide for multi-family housing within the constraints of the town. Part of the resistance I think in the town in taking these measures were when you're talking about providing mandates for developers of ten or more units they're going to say we're not going to have a development of ten or more units anywhere in this town. Why should we bother? The response should be that at the moment you don't have those opportunities, but one could hope that we could attempt to take steps to make it possible for those larger developments to occur and should have the zoning in place should that happen. Don't wait until the opportunity arises because no one will remember or think about it then and because it provides an excuse to keep a zoning regime that is not intentionally, but in effect is exclusionary. And that's a distinction that definitely has to be made. One uses the term exclusionary zoning. The tendency is to think ah ok these are people who want to keep minorities out and yes there is a good deal of that. But that is not the case in every municipality. More often than not it is an attempt to maintain the existing character of a community. I am not talking about Pound Ridge alone now but in various municipalities in Westchester. Ok in this part of the village we have the typical post war type of suburban development let's zone it to keep it that way, this part is semi-rural we will impose a zoning that will keep it that way, this part was developed before WWII in a different denser sort of single house or two family home development, we'll zone to keep it that way. This is the hamlet where there is denser zoning we'll zone to keep it that way. There is nothing nefarious about that except in effect what it does by freezing the existing pattern of development it prevents the creation of new pocket s of denser development where it might be appropriate, also many of these communities will look at will think in terms of denser development with reference to older denser development patterns which might not be aesthetically desirable in the 21st century and not think in terms of new models of community development. It also deters innovation in community design because you are in effect zoning for the past fifty years and not the next fifty years. There's also the matter of fiscal concern that the areas where you have sufficient sewer capacities, sufficient water capacities, sufficient road capacity and intersection capacity tends to be in the areas that are already densely developed. So there is a concern that if you more densely develop other parts of the municipality you're going to have to build additional roads you're going to have to do studies and put in traffic light you're going to have to extend sewer lines or increase the capacity of the sewer treatment plants. So there are a host of reasons why a municipality could be reluctant to change their zoning pattern, which are not exclusionary in design, but are exclusionary in effect.

T: Pound Ridge was found exclusionary under the Berenson, but not the Huntington analysis. Could you explain the difference between the Berenson and Huntington Analyses and why Pound Ridge was found exclusionary under one but not the other?

B: Ok, Huntington that well it's named after the town of Huntington in Long Island. And what happened there was you did not have the entire town zoned in such a way that it would prevent denser development, lower income development, minorities. But the ability for that denser development for lower income housing development was restricted to one part of the town. The less desirable part of the town near the railroad tracks, near the railroad station. So you look at these communities in Westchester and there are two questions. One, what is the overall percentage of minorities. Of Black and Hispanic residents. Are they sufficiently represented in the town or are they not? Now in Pound Ridge you have a very small percentage of blacks and Hispanics combined it was 4% of the population I believe in 2000 and up to 6% in 2010. But the second question the question comes to the fore in Huntington, do you restrict the affordable housing that and thus lower income households and, for the most part minorities to a particular part of town. And no that is not the case in Pound Ridge. In other municipalities in Harrison for instance it is the case. The village of Harrison and the town of Harrison have the same zoning and what you have is minorities are essentially concentrated in the village of Harrison. In the older part of the town developed much earlier with a denser type of housing which has largely become run-down and you have loads of illegal apartments there which the municipal officials have not even attempted to regulate really. And the more suburban areas that developed later. Are white they are low density and there you have a clear cut Huntington issue. In the municipalities where you have very low minority populations it is unlikely that you're going to run into that problem. If there are no blacks or Hispanics in the town they're not going to be concentrated anywhere. And if you're looking at thirty black families in the entire town and 1/3 of them, ten of them are located in one part of town that's still only ten families and not a sufficient basis of citing the town as running afoul of Huntington.

T: Could you explain the difference between DEC and DEP?

B: Yea, DEC is the New York State Department of Environmental Conservation, a state department that reports to the governor. And that they oversee environmentally constrained land one could call environmentally constrained lands environmentally constrained in term of the development potential. For instance, they would jurisdiction over mapped wetland. They would also have a role I believe in a brownfield site. The DEP is the New York City Department of Environmental Protection within NYC deal with requirements for environmental cleanup of contaminated soils, groundwater, sewage outfalls to Jamaica Bay and other waterways, but they also have oversight over the New York City Watershed area, which provides the water that flows into the reservoirs that provide the drinking water for the city. So when it is a matter of protecting the water quality in the reservoir that agency has jurisdiction. That is a NYC office not reporting to the governor but to the mayor. And it is precisely this sort of fracturing where if you are a developer or municipal officials say in Pound Ridge and you are looking at the need to understand what the regulations are: regulations imposed by that state agency, maybe others imposed by the state Department of Health and those imposed by the NYC DEP. I'm not 100% clear on the jurisdictional issues by any means. You are confused and I guarantee you municipal officials are confused. Keep in mind that in these municipalities you're not talking for the most part full time professional planners. Yea they will have at least a couple of full time employees, but you have mayors who are not full time mayors. You have decisions made by citizen planning boards. They are going to be confused. There is the need for greater education to lay out clearly who is responsible for what, to maybe have these agencies talk with one another so in places where there is overlap the regulations don't contradict each other. And in addition to the written regulations, what are the interpretations, the enforcement policies by the people who have jurisdiction within those agencies for a particular area, generally Westchester as a whole. That probably becomes subject to change every time an administration changes and officials change.

T: In your opinion, what is the likelihood of multi-family housing being built within Pound Ridge?

B: You're likely to see at least one development in Scotts Corner. The likelihood of extensive multi-family housing, very little, at least in the foreseeable future. Now if you look at our Berenson

Report, the Pratt piece of it, of which I'm the principal author, you will see that the recommendations are not just for multi-family housing because John and the graduate student and I moved away from concentration on that exclusively because there are communities where that is not really feasible. So you also look at the recommendations which would be applicable outside of parts of municipalities where you can have multi-family housing, such as accessory apartments. You are not changing the building footprint. You are going to add additional people and additional water use and sewage, but chances are if you're looking at the lifecycle of a home you're probably looking at a place where a family with children lived, the children grew up left, a couple without children anymore carve out an accessory apartment. It is probably a small apartment that would serve a person, a couple, a couple with a first child. That family before it grew would move or attempt to move to a larger house. So that is a solution when you have such severe constraints that you are looking at each additional person's toilet usage and flushing during the day, it can be an issue, but it's going to be much less of an issue. You look at the ability to create less expensive smaller homes, cottage style developments. You look at the creation of not multi-family development but going from one family to two family or three family. Now can you create affordable housing that way? Or another way? Something we did not recommend in that report that could be done is to have low-income developers or at least non-profit organizations that build or maintain lower income housing purchasing a vacant unit or a unit that is on the market and trying to make an agreement to get it for a lower price. And turning it into a lower income affordable unit which would go in to the program and made affordable in perpetuity. Now that's being but more in the matter of a unit within a condo development or when you're dealing with a two or three family when one unit would become affordable when the other two remain market rate. More difficult when you're talking about a larger single family home on a large lot such as you would have in Pound Ridge. So you're looking at creating affordable housing unit by unit, which essentially if you're talking about a 20 unit development and two of those units are affordable you're still looking at it unit by unit although you're looking at in a context of larger redevelopment, but there's also the need to look at affordability opportunities which do not involve the creation of larger numbers of housing.

T: Do you have any final comments?

B: I had talked about the difference between a community that had intentionally or unintentionally excluded minorities and a municipality which had constructed lower income housing, or allowed it but concentrated it in one particular part of the municipality. Now the latter in Westchester the example of note is Yonkers. Which actually was a court finding in the 1990s that Yonkers had clustered its public housing in one quadrant of the city, so its minority population and the lower income population were in that one portion. And ironically the judge who made that finding was a guy named Sands, Judge Sands, who lived in Pound Ridge where there was no affordable housing. So it's just a final comment to point out a little irony. And it gets to the heart of the matter of who are the bad guys and who are the good guys. The Judge Sands ruling pushed the bounds of racial and economic integration, but yet it was issued by somebody who lived in a town that for a very different reason was very homogeneous in terms of races and probably incomes.

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End

Interview with Adam Lubinsky 1/29/16

Interview not transcribed.

Interview with Craig Gurian 02/05/2016

Interview not transcribed.

Interview with Richard Lyman 03/21/2016

T: The first provision is multi-family housing sites shall have a 20-acre minimum in R-1A and R-2A and not less than 30 acres in R-3A districts. I know that this is to accommodate septic systems, but is there a specific source where you got the 20 acre and 30 acre numbers from?

R: No, I think it was...if you went back historically we had a senior housing provision in the ordinance originally and it was decided that 20 acres...and mostly...in some respects it is an arbitrary number because there are sites that may be under 20 acres that could be suitable to handle that, but for the most part, if you know the topography of Pound Ridge at all, most of the site's that we have are very rocky, very wet, and fragmented in how they would accommodate a development of that size. So is there a magic number there of 20 acres or 30 acres? No. There just happens to be the way it works out.

T: The second ordinance the lot must be within a quarter mile of one of the town's major roads.

R: Now there's a very specific reason for that. Many of the roads that we have are, for in want of another term, wagon paths. The fire equipment of today is substantial in size. And one of the concerns was that losing a house on 3 or 4-acre piece is tragic, but it's one building. But attached housing would be a different type of fire to fight and it was felt that that was a necessary provision, as much for safety than anything else. That was actually the fire department weighed in on that. So we have no pressurized hydrants here. If we have a fire here we have to cull it from a pond or if we're lucky to have someone say you can use my swimming pool. But that's a matter of public safety. For people who are not really familiar with the area, they just don't really get that. I in fact had the regional director of HUD up to Pound Ridge with her team, drove them all around Pound Ridge to really give them an idea of what we were topographically, what these provisions meant. And they were quite satisfied. So it's a realistic concern.

T: The third provision in here, I was a little bit confused about, I didn't entirely understand it. Notwithstanding the above for lots for lots that are within a quarter mile of the intersection of Westchester Ave and Trinity Pass Road, which I understand to be the marker for Scott's Corner, the multi-family housing site shall have a site of not less than the minimum lot area required for one family dwellings in the zoning district in which the site is located. So I understand that to mean that a vacant site on an R-1A site within that buffer, as long as it on a minimum one-acre lot, could be eligible.

R: That is correct. And that was for a few reasons. One, Scott's Corner is our commercial hub as it were and we have long felt that that would be the appropriate area for maximizing the density of housing even though we have some wastewater issues there. The hope was we could solve two problems at once. So we created that zone because it's already dense and increasing the density won't have a negative effect on the rural character of the town. So we tried to concentrate in that area...

T: The idea with the third provision is that wastewater treatment system would be able to be put in place on the same lot? Or it would have to be built somewhere else?

R: No that's the thing we are struggling still with trying to come up with a centralized solution to that area. Because it's long been plagued with wastewater issues. So we thought that we would be able to solve the issues with the commercial district and at the same time increase our housing.

T: And has there been any County funding made available to you for that?

R: No.

T: So I'm going to move onto the next provision, which makes enough sense, but we'll go through

it anyway. Aggregates of slopes in excess of 25% and the wetlands, watercourses and water bodies shall constitute less than 45% of the site's gross area. I think that's pretty straightforward.

R: All environmental concerns. And it's to prevent shoehorning something into too tiny a site. A 20-acre lot with only one acre buildable. And it's not as crazy as you think. I had up here right next to the property I'm on. Out of 53 acres, there were three viable building lots. And that's sort of representative of what we're dealing with in Pound Ridge. And that's not a lot.

T: From those four ordinances I found seven vacant lots that were eligible for multi-family housing development. Does that sound right to you?

R: There may have been a few more that met the criteria.

T: There was one lot that was initially available when I did the analysis, but after looking closer I found that it was split between an R-2A and R-3A zone and by the time you did the math between the two sections the lot was no longer available in either zone.

R: Yea you would clear that up with zoning variance. We did that with a lot in the Scott's Corner area. I had actually brought to the County. It was actually two lots, owned by the same owner that comprised I think about 27 acres. Most of it was in the two-acre zone, I know that. That would have required a variance to get that accomplished probably. It was going to be an interesting zoning case. It was in an area where I think it probably would have worked. Then we couldn't come up with any money to do it. Which by the way, I don't know if this figures into anything for you or not, but the biggest problem that we face here is not finding a site, but the cost of development.

T: Next ordinance. The maximum number of 'dwelling units' shall be determined by dividing the gross 'lot area' (excluding slopes in excess of 25% and wetlands, watercourses and water bodies, as defined in the Town of Pound Ridge Freshwater Wetlands Law) by the minimum 'lot area' required for 'one-family dwellings' in the zoning 'district' in which it is located, multiplying that result by four and rounding down to the nearest whole number. Now I took this to mean that the site was being developed at a density of four times that of a single family construction. Was there a place where the four times the density came from.

R: I think that that was number that was arrived at as just something that would result in not overbuilding on a site. One of the things we're trying to do is maintain the rural character. So I think that's really the genesis of that.

T: The next provision then is that there shall be no more than 50 dwelling units in any development. I did the math for this with the seven eligible lots that I found and found that some units were lost with this provision. Could you speak on that?

R: Yea that has as much to do with traffic as with anything. It becomes a density thing. When you have a single family zone and all of sudden you have 100 units next door, but yea it's small little roads.

T: The next provision is about building coverage. It sets building coverage for R3 at 5%, R2 at 7.5%, and R1 at 15%. If you could just speak a little bit about where those numbers come from and the reasoning behind it.

R: That's one I really can't explain. I don't know if there's a magic number there. It really had to do with control over what goes on a lot so lots don't get overbuilt. And I think if you dive into the regulations a little more you find that if you're closer within the setback line...that if you exceed your coverage you're increasing your building setback lines and it has to do with separation of housing for neighbors and all of that stuff. Is there a real environmental reason for it? I think it's more aesthet-

ics. Quite frankly.

T: Would you say it goes along with the community character concerns?

R: Yes, precisely. It's really trying to strike a balance.

T: The next provision. This is the 50% open space requirement. Where I was getting stuck on this was in interpreting how of it was a community character concern and how much it was an environmental concern.

R: Probably you could say 100% of it was environmental. Trying to just ensure that it is a viable lot to begin with. SO that you have it has to do with you have a 200 ft. circle when you create a lot so it eliminates odd ball shape lots a stuff. And I think you're going to have to refresh my memory, you have to remember I'm the Town Supervisor not the Planning Board

T: To the best of your ability, the requirement is that 50% of the gross lot area has to be preserved as open space

R: Ok now I, what we're trying to do again ensure that there remains a good separation between lots. Make sure people don't just go in take own all the trees and create a lawn. It's really, this is more community character, but also environmental at the same time. Trying to preserve the integrity of the land as much as we can.

T: The next couple of ordinances have to do with regulating buildings. The first one is the maximum building length cannot exceed 100 ft. and there is a height cap of 2 1/2 stories or 35 feet.

R: 35 feet to the midpoint of the roof is the way it's measured. All have to do with mass and scale. That's it in its entirety. And in New York unless you sprinkler a building you can't go up past two stories anyway in a wood frame construction. All the stuff that has to do with the size of the building has to do with mass and scale. So that's very much community character

T: There's a couple of provisions that regulate the size of the units in the building. The average area of units cannot exceed 2500 sq. ft. and no single unit can contain in excess of 3,000 sq. ft.

R: Yea, I there again I think it's just trying to control size and scale. And remember what's really driving the whole multi-family thing here is affordability. So having a developer come in and trying to create very large townhouses that are only going to meet certain income criteria while there is also a provision to provide affordable units. It all comes down to creating a project that is affordable and meets the criteria is what we're really going for.

T: Next provision is common indoor and outdoor recreation facilities provided in lieu of recreation fees.

R: Right when you create a new building lot you have to pay a \$12,000 fee to the town which goes into a separate fund for creating new recreational facilities. It's not for maintenance of existing facilities, it's for new facilities. To make up for pressures on existing facilities. SO in lieu of paying that recreation fee, you can provide recreational facilities on site. And it is presumed those facilities are taking the pressure off the existing town facilities.

T: The next provision is a parking provision. Where does the 2.0 number come from?

R: Most families in this area have two cars. Very few are a single automobile, unless it's a single person obviously. I think there is also a provision that if you have a third bedroom there is a half space. And that's to ensure that there is adequate parking. If you know anything about condos, you know

that if you go as a guest you never find a place to park.

T: Multi-family units shall not be serviced by individual wells or septic systems. I assume that's because a well and septic system cannot be supported by a well and septic system.

R: That is correct. Because if you had multiple townhouses in the development and each one had its own individual septic system and well, the separation would just kill your density completely. The notion is to create a single water supply

T: The next provision is for a homeowner's association to be formed. I think this is pretty self-explanatory, to provide maintenance for upkeep of common facilities. Is there anything else to it?

R: No that's pretty much it. There just has to be a homeowner's association and mechanism to pay for snow removal and you know the general maintenance of the facility. I don't think there's any real magic there.

T: The next provision is that multi-family units may be comprised of two family dwellings. Now, I was under the impression that two family dwellings were already multifamily. Are two family houses not considered multi-family?

R: They are to me. I think what they are trying to say is that within a project a two family house is in fact to be considered multi-family. When in some areas where a two family unit is permitted it is permitted as a two family house, not really considered to be beyond that density. Most people consider multi-family housing to be three or more, so we're just saying two or more. Otherwise there really are no other two family house in Pound Ridge right now.

T: Is there a senior living facility in Pound Ridge?

R: There is of sorts. In Scott's Corner a project known as A-Home, which is 12 units, but only 4 kitchens. It's a shared kitchen facility. That had to do with limitations on septic and water. There are counting formulas for that and the site didn't add up to those formulas. It's actually worked out ok. There is in A-Home there is an age requirement, I think 55. There is also a maximum income.

T: Moving back to the zoning code. This next provision says that the town board in its discretion may modify the landscape buffer requirement. I understand the ability of the town board to modify the width of the buffer, I'm more interested in understanding the reasoning behind the landscape buffer itself.

R: Well the landscape buffer I think is 100 ft. And it was decided that there would be certain parcels, I can think of one in particular, and if you sited the project closer to one property line than the other. So you can create a 150 ft. separation on one side and only 50 on another you would have less impact because you are moving it away from an area that already has development to an area where there would never be any development. SO the idea was to provide a flexibility in order to do that. By the way that decision would not be made in a vacuum. It would be made on the recommendation of the planning board

T: After going through these ordinances I calculated that the maximum capacity on all eligible sites it would be 270 units, 27-39 affordable units depending on bonuses taken. Does that sound right?

R: I think the one thing is that on the one hand area wise you would be able to get that, but infrastructure-wise that would really be the driving factor. You know assuming you could come up with the area providing the infrastructure to support it. So providing a waste-water treatment system that could handle it. You know the number of units you're proposing.

T: I came up with three main ideas behind the zoning, 1) Maintaining Community Character, which includes in-scale development, and maintaining the rural aesthetic, 2) Protecting Environmental Resources which includes, slopes, wetlands, waterbodies, and reservoirs, 3) Maintaining Infrastructural Capacity, which includes wastewater treatment, fire/emergency service, roads/traffic capacity, and school capacity. Does this sound correct to you? Is there anything missing?

R: Sounds to me like you hit it. I think that encapsulates it very well.

T: I have a few other questions. The first one is about Ridge 29. The site allows for 50 units, but the proposal was for 43 units. What happened to the other seven units?

R: Slopes, road configurations, some had to do with setbacks, and believe it or not some had to do with parking. And it was interesting because the units as they existed included a one car garage and they were considering the driveway as a parking spot, which was a little bit contentious with the planning board. I will tell you, I think the Ridge 29 project is dead. We haven't heard from the developer since last June. And I did speak to him around Christmas to see what was going on. What hurt them was that the Dept. of Environmental Conservation denied their septic system.

T: That seems to be the biggest impediment to development. Was it NYC DEC?

R: No, DEP, New York State

T: Their denial was because this type of onsite wastewater treatment system was denied because it hadn't been done in Westchester?

R: Their principle concern because it has been done in Dutchess County and Newburgh. But their principle concern was that it would be maintained by a homeowner's association. I was actually a little bit ahead of the curve for doing a similar thing in Scott's Corner. I was met a little more receptively because it would have been owned and operated by the municipality. The fear was that homeowner's associations are only as good as the people in the association and only as economically viable as the people in the development, paying the dues to be in it. Whereas a municipality is in it forever.

T: Knowing that, has there been any thought to changing the zoning code to having the town operate rather than a homeowner's association outside of Scott's Corner.

R: The problem with that has to do with state laws for funding. It cannot be maintained by the general tax base, it has to be funded only by the actual end users, so it still comes down to the same issues. The town would have to create a sewer district; it would just have to be funded by those who were within the district being served by that. And so it becomes a little problematic for the town trying to justify that. We are discussing it for Scott's Corner, but looking for what waivers would be available. Because with Scott's Corner because it is the commercial district and it is I won't say essential for the town, but certainly something that attracts people to the town, having a grocery store and amenities. May be a tough sell at the comptroller's office, but the town to create a sewer district to maintain 25-30 attached units would be difficult.

T: The next question is broader. It has to do with funding for what you've been doing. Have you worked with the County in anyway on funding? And the reason I ask is because of the \$52 million fund created by the consent decree to acquire land and provide for infrastructure for multi-family affordable housing development.

R: The short answer is yes; I have brought to the County actually three different possible sites. And the issue comes down to there just is not enough bang for the buck. That is where we are. We have one site, right smack in the middle of Scott's Corner right now that is in foreclosure through a tax

in rem proceeding we have. The County actually has first right of refusal, that's part of the consent order. They're not interested because through the cost of acquiring the site and the cost of the infrastructure to be able to handle wastewater there is no economic return. I brought another site to their attention that was in Scott's Corner that had ample size to do 10 units and would have the ample septic capacity. The whole thing. It was a very viable piece of property and the developer looked at it very hard and walked away because there was not enough economic return. And the third site was the same thing. They brought another developer in and he spent some time up there looking at it and walked. Because it came down to the same thing, the guy wanted to do 50, 60, 70 units and we could only do 8,6,10. It just doesn't pay. And that's part of the issue with the consent order is that doing this type of construction in communities like Pound Ridge where it just doesn't work. In North Salem there's a development called Bridleside, 60 units all affordable, I think the County put up something like \$950,000 to just do the septic system. And then the builder with that out of the way the builder could do what he was doing and the project worked.

T: When you say it won't pay, is it a concern about capital or operating costs?

R: Capital costs of construction.

T: But it wouldn't necessarily be an operating cost for the county?

R: Yea for the County it comes down to getting the most bang for the buck. How many getting the most amount of units for the money they spent. And in Pound Ridge the amount of money they would be spending to subsidize a project it just made no sense.

T: Has the County approached you with any affordable housing goals?

R: No, nothing beyond what was in that study [Rutgers Study] and saying this is your fair share. It's one thing to be told this your fair share and it's another when you're looking to do it, given the constraints that we have.

T: The whole impetus for your amendments came more from the housing monitor and the Berenson report?

R: Yea it was really the Housing Monitor. It was you guys are being discriminatory because you have no provision for multi-family housing, except for you senior housing provisions. And they found that to be discriminatory because it was all about seniors and nothing else. That was when we sat down and did a hard look to modify things. They seemed to be satisfied that we were not being discriminatory. We never felt that we were. Our discrimination is purely economic. If you can afford to buy in here, we don't care who you are.

T: And you were removed from that list last year?

R: Yes, that's correct.

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End